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No. 80-2197

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF ALABAMA, Ex Rel. Charles A. Graddick, as Attorney General of the State of Alabama,

Petitioner

v.

TENNESSEE VALLEY AUTHORITY, et al.,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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QUESTION PRESENTED

Does the principal office provision of §8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a), require that the Tennessee Valley Authority's headquarters be located in the immediate vicinity of Muscle Shoals, Alabama?

PARTIES

In addition to the names contained in the caption, appellants-defendants in the court below (respondents here) include: S. David Freeman, as chairman of TVA's Board of Directors; Richard M. Freeman, as a Member of TVA's Board of Directors' and the Third Member of TVA's Board of Directors, to be further identified later. The names of all other parties are included in the caption.

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OPINIONS BELOW

1. The opinion of the United States District Court for the Northern District of Alabama, holding that the principal office provision of §8(a) of the TVA Act of 1933 requires that TVA's headquarters be located in the vicinity of Muscle Shoals, Alabama, is reported as State of Alabama v. TVA, 467 F. Supp. 791 (N.D. Ala. 1979), and is reproduced as Appendix A hereto, pp. 1a-38a, infra.[1]

2. The opinion of the United States Court of Appeals for the Fifth Circuit,

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[1]The appendices to this petition are separately bound pursuant to Rule 21.1(k).

There are two volumes of appendices. The first volume, containing the materials required by Rule 21.1(k)(i) through (iii), consists of Appendices A - E. The second volume, submitted pursuant to Rule 21.1(k)(iv) contains Appendix F, which is a discussion of the legislative history and post-enactment developments concerning the principal office provision of the TVA Act.

reversing the district court's decision, is reported as State of Alabama v. TVA, 636 F. 2d 1061 (5th Cir. 1981), and is reproduced as Appendix C hereto, pp. 42a-74a, infra.

JURISDICTION

The judgment and initial opinion of the Court of Appeals for the Fifth Circuit was issued on February 13, 1981. See Appendices C and D, pp. 42a-76a, infra. The State of Alabama's petition for rehearing was denied on April 2, 1981. See Appendix E, p. 78a, infra.

This Court has jurisdiction pursuant to 28 U.S.C. §1254(1), this being a petition for a writ of certiorari seeking review of a court of appeals decision in a civil case.

CONSTITUTIONAL, STATUTORY, AND

RULE PROVISIONS INVOLVED

1. Section 8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a), which provides:

> The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

2. Section 2(e) of the TVA Act of 1933, 16 U.S.C. §831a(e), which provides in relevant part:

> Each member of the Board, in addition to his salary, shall be permitted to occcupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. ...

STATEMENT OF THE CASE

The Facts

TVA headquarters, administrative headquarters, and executive offices are located in Knoxville, Tennessee. (R. 45-46, 49-50, 242-245)[2] TVA's General Manager is "the principal TVA administrative officer", and his office is located in Knoxville. (R. 46, 109-111, 242-243) The offices of TVA's Directors, who have the authority to "direct the exercise of all the powers of the Corporation," are in Knoxville. (R. 45-46, 245) Knoxville is where the largest number of TVA's administrative staff are located. (R. 48-49, 161, 246)

TVA has a room in the National Fertilizer Development Center in Muscle

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[2]References to "R" are to the record on appeal in the court below.

Shoals which it refers to as a "meeting room maintained by TVA at Muscle Shoals for the purpose of providing a site for meetings of the Board of Directors." (R. 10) There are four such meeting rooms, only one of which is located at Muscle Shoals. (R. 54, 61) The meeting room is used for other TVA business and is occasionally made available for use by the public. (R. 61) Prior to the filing of this lawsuit, the room at Muscle Shoals had been used only one time for a TVA Board meeting, and that was more than 12 years before the lawsuit. (R. 54-55, 61-62) Between the time of that last Board meeting in Muscle Shoals an the filing of this lawsuit, two hundred and forty-five Board meetings were held elsewhere, most of them in Knoxville. (R. 54-55)

TVA's Board has formal meetings twice monthly, virtually all of which are held in Knoxville. (R. 53-54) In the year preceding the filing of this lawsuit, one such meeting was held in Chattanooga, Tennesseee, and the remainder were held in Knoxville. (R. 54) Prior to the filing of this lawsuit, an estimated more than a thousand formal Board meetings had been held.[3] Only seven, or less than 1% had been held at Muscle Shoals. (R. 254) The last one held there before this lawsuit was filed was held in 1965. (R. 254)

Service of legal process on TVA is ordinarily done in Knoxville. (R. 56-57, 253) Of the forty-six lawsuits filed

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[3]Forty-three years and ten months, or 526 months, are involved. Meetings are held twice monthly (R. 53), and 526 x 2 = 1,052 meetings.

against TVA in the twelve months prior to the filing of this one, process was served in Muscle Shoals in only two of them. (R. 57) In one of those two, service was also made contemporaneously in Knoxville, and in both of them the Muscle Shoals service was accepted by Public Safety officers who simply forwarded it to Knoxville. (R. 56-57, 253) The process in this lawsuit was served and accepted in Knoxville. (R. 56-57).

A patent attorney working in the National Fertilizer Development Center at Muscle Shoals has authority to accept service of process by virtue of the fact that he is one of the 56 attorneys in TVA's Division of Law. (R. 56, 58, 251) The other 55 attorneys, with identical authority, are located in Knoxville. (R. 56) It has been so long since the patent

attorney in Muscle Shoals accepted service of process that he could not remember the last time. (R. 253)

The patent attorney in Muscle Shoals is one of 12 Assistant Secretaries to the Corporation. (R. 247-248) The other 11 are located in Knoxville, as is the Secretary to the Corporation. (R. 56, 59, 247-248) The patent attorney spends at least 99% of his time on duties other than those of an Assistant Secretary to the Corporation. (R. 58-59) The corporate resolution appointing him an Assistant Secretary to the Corporation and delineating his authorities and duties as such does not mention the principal office. (R. 58, 194) Nor does TVA's relevant organizational bulletin describing the responsibility of that position mention the principal office. (R. 112.5) The duties of an

Assistant Secretary to the Corporation do not include accepting service of process. (R. 112.5, 194, 248, 251)

Duplicate original sets of Board minutes are kept in Knoxville as well as Muscle Shoals. (R. 55-56) Knoxville is the only place where TVA keeps a complete set of reports which the Comptroller General has issued after auditing it. (R. 63-64, 242) TVA has four corporate seals: two in Knoxville, one in Chattanooga, and one at Muscle Shoals. (R. 59-60) The person in charge of the corporate seal at Muscle Shoals estimates that it has been six to eight years since he used it. (R. 60, 254)

TVA claims that the patent attorney whose office is located in the National Fertilizer Development Center Building at Muscle Shoals is in charge of its principal office, and that it is located

in that same building. (R. 10) However, TVA's telephone directory does not list a principal office, nor does its listing for the patent attorney indicate that he has anything to do with the principal office. (R. 254-255) The National Fertilizer Development Center Building has a building directory in its lobby that lists the offices contained in it. (R. 256) That directory does not indicate that the principal office is located there. (R. 256-257)

The District Court Proceedings

In 1977, Alabama filed a complaint and amended complaint in the district court alleging that TVA was violating the principal office provision of §8(a) of the TVA Act by not locating its headquarters, administrative headquarters, and executive

offices in the immediate vicinity of Muscle Shoals, Alabama. (R. 1-6, 267-274) The relief sought was a declaratory judgment and an injunction against continued violation of the Act. (R. 5-6, 273-274) The district court had jurisdiction under 28 U.S.C. §1331.

TVA filed a motion for summary judgment, which in addition to joining issue on the merits attacked Alabama's standing and claimed the lawsuit was barred by the doctrine of res judicata. (R. 8-9, 282-283) After taking discovery on the merits, Alabama cross-moved for summary judgment. (R. 276)

In 1979, the district court entered an order denying TVA's motion and granting Alabama's. The order declared that TVA was required by law to locate and maintain its headquarters in the immediate vicinity of Muscle Shoals, Alabama, and the order

enjoined TVA from locating or maintaining its headquaraters in any other place. (R. 305-306) Appendix B, pp. 39a-41a, infra.

The district court issued a memorandum opinion to accompany its order. That opinion is published as State of Alabama v. TVA, 467 F. Supp. 791 (N.D. Ala. 1979), and is reproduced as Appendix A to this petition, pp. 1a-38a, infra. The district court opinion explained that the State of Alabama had standing to raise the issue and that it was not barred by the doctrine of res judicata. See, pp.2a-21a, infra. The opinion also explained that the plain meaning of the principal office provision of §8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a), requires a finding that the enacting Congress intended TVA to locate its headquarters in the immediate

vicinity of Muscle Shoals, Alabama, and even if that language were considered to be ambiguous the employment of other means of statutory interpretation dictate the same result. See, pp. 26a-38a, infra.

The district court entered a conditional stay order pending appeal. (Supplemental Record on Appeal of March 25, 1979).

The Court of Appeals Proceedings

In 1981, the United States Court of Appeals for the Fifth Circuit entered a judgment reversing the district court's order. See, Appendix D, pp. 75a-76a, infra. That judgment was accompanied by an opinion which is published as State of Alabama v. TVA, 636 F. 2d 1061 (5th Cir. 1981), and is reproduced as Appendix C to this petition, pp. 42a-74a, infra.

The court of appeals opinion affirmed the district court's holdings that Alabama had standing to bring the lawsuit and that the lawsuit was not barred by res judicata, pp. 45a-47a, infra. However, the court concluded that the meaning of the key language in the statute was ambiguous. See pp.48a-49a, infra. Employing what it called "familiar but nevertheless slippery tools of statutory construction," p. 49a, infra, the court of appeals concluded that the Act's requirement that TVA's principal office be located in Muscle Shoals did not mandate the location of its headquarters. See, pp. 49a-74a, infra.

REASONS FOR GRANTING THE WRIT

I.

This Case Involves an Important Question of Federal Law Which Has Not Been, But Should Be, Settled by This Court

The federal question involved in this case concerns the proper interpretation of the principal office provision contained in section 8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a). That provision expressly states that:

> The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama.

The issue is whether "principal office" means headquarters. If it does, as Alabama maintains and the district court concluded, then TVA is in violation of the law and has violated it for more than

forty years. There are three independently adequate reasons why this Court should address and settle the issue.

A. The Question is An Historically Important One

Appendix F to this petition, pp. 82a-173a, infra, contains a discussion of the legislative history of the principal office provision of the TVA Act. As discussed therein, the dispute over the meaning of this important federal statutory provision has raged for nearly a half century.

The earliest written evidence of the dispute dates back to 1934. In that year, then-Senator Hugo Black of Alabama began a two-year exchange of letters with the Chairman of TVA's Board of Directors in which Senator Black, who was instrumental

in passage of the legislation, vehemently declared that "the establishment of headquarters at Knoxville is in plain, open, and palpable violation of law." See, p.127, infra.[4] The controversy resulted in a letter from President Roosevelt, drafted by TVA, to Senator Black. See, State of Alabama v. TVA, 636 F. 2d at 1067 n. 9, p. 62a, infra.

After Senator Black became Justice Black and was thereby removed from the dispute, disagreement over the meaning of the principal office provision continued. It became part of the subject matter of a joint congressional committee investigation in 1938 and 1939, which is discussed on pp. 137a-147a, infra. That investigation resulted in a majority

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[4]The relevant portions of Senator Black's letters and TVA's replies, are reproduced on pp. 121a-131a, infra.

report which sided with TVA, but acknowledged a "substantial difference of opinion on the subject," and recommended that Congress consider enacting clarifying legislation, pp. 144a-147a, infra.[5] A minority report emphatically concluded that the principal office provision mandated the location of TVA's headquarters and that TVA was openly violating that mandate, pp. 146a-147a, infra.

The dispute was the subject of comment by various congressmen over the years, pp. 131a-133a and 162a-172a, infra, with even some Tennessee congressmen acknowledging that TVA was violating the clear meaning of the principal office provision, pp. 162a-164a, and 170a-171a,

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[5]For reasons discussed on pp. 147a-161a, infra, Congress never enacted clarifying legislation on the subject.

infra. Over the years, Tennessee congressmen have attempted to have Congress ratify TVA's actions by amending the principal office provision -- the earliest attempt was in 1945 and the latest in 1979 -- but the language has not been changed and the dispute remains. See, pp. 162a-173a, infra.

The controversy also has its history in court. Forty-two years ago a group of Alabama citizens sought to have the issue decided through a citizen-taxpayers lawsuit which resulted in the opinion published as Frahn v. TVA, 41 F. Supp. 83 (N.D. Ala. 1941), and discussed on pp. 133a-136a, infra. In that case, the court said that if felt "constrained to say that there may have been an interpretation placed upon the [principal office] provision of the Tennessee Valley

Authority Act which was not intended when the Act was adopted by Congress, and doubtlessly, the selection of the personnel of the Board of the Tennessee Valley Authority very greatly influenced the adopted interpretation," but concluded that the citizen taxpayers lacked standing to raise the issue. See, pp. 135a-136a, infra; State of Alabama v. TVA, 467 F. Supp. 791, 796-797 (N.D. Ala. 1979), aff'd on that point but rev'd on other grounds, 636 F. 2d 1061, 1063-1064 (5th Cir. 1981), pp.19a-20a, and 46a-47a, infra.

Then, in 1977, the State of Alabama, which did have standing to raise the principal office issue, brought this lawsuit; the district court decided the issue in Alabama's favor, but the court of appeals sided with TVA.

In summary, the federal question concerning the proper interpretation of

the principal office provision of the TVA Act of 1933 is an historically important one over which congressmen and lower courts have disagreed for nearly a half century. This Court can and should write a definitive final chapter in the matter by granting certiorari and addressing the issue.

B. The Economic Interests Involved Are Significant

In the "Injury Asserted" part of its amended complaint, Alabama alleged that TVA's failure to locate its headquarters in the vicinity of Muscle Shoals, Alabama, had cost the State of Alabama "millions of dollars in state tax revenues" and had damaged its economy by depriving the state of "thousands of jobs and many millions of dollars in payroll and other expenditures and secondary economic benefits." (R. 267-274); State of Alabama v. TVA, 467 F.

Supp. 791, 794-795 (N.D. Ala. 1979), p. 7a, infra. TVA did not dispute those factual allegations. (R. 43-44, 269-270, 280-281, 319); State of Alabama v. TVA, 467 F. Supp. at 795, pp. 12a-13a, infra.

At a minimum, TVA's headquarters consists of its Board of Directors, Office of the General Manager, and departments of Law, Personnel, and Finance -- all of which are located in Knoxville, Tennessee. According to the latest figures filed in the district court by TVA, those administrative units have a total annual payroll of more than $32,000,000.00, and a total annual budget of more than $60,000,000.00.[6]

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[6] One of the conditions of the stay pending appeal issued by the district court was a requirement that TVA file semi-annual status reports with the court concerning certain information. The payroll and budgetary figures referred to are contained in TVA's March 1981 status report.

The economic stakes are high and the injury which Alabama has suffered and continues to suffer because of TVA's failure to follow the statutory mandate are enormous. That is the second independently adequate reason why the federal question involved is sufficiently important for this Court's review.

C. The Principle Involved Is Of Great Importance

The third reason why this Court should grant certiorari is that the ultimate questions involved are worthy of this Court's attention. It may seem odd that Alabama should even attempt what appears to some to be such an impractical thing, and all in the name of vindicating one sentence of a law laid down a half

century ago and disobeyed ever since by one of this country's most powerful agencies. From the beginning of this lawsuit, TVA has never missed an opportunity to suggest how impractical it would be to obey the law if the law were as Alabama argues it is.

TVA's main line of defense has been that "principal office" does not mean headquarters, but that has not been its only defense. TVA's fallback position has been that even if the 1933 Congress intended to mandate that TVA locate its headquarters in Muscle Shoals, that intent is archaic, outmoded, and ridiculously impractical in view of the imperial edifices that the barrons of TVA have now ensconced themselves in (through leaseholds) in Knoxville. TVA argued below that it had the right and power to misinterpret the law, so long as its

misinterpretation was "reasonable." State of Alabama v. TVA, 636 F. 2d 1061, 1064-1065 (5th Cir. 1981), pp. 50a-52a, infra.

TVA has consistently missed the point. The point is that the law should be obeyed, or it should be changed. No other alternative is proper in our system whose central ideal is the principle of rule by law. Neither TVA nor any other bureaucracy has any license to disobey the law "reasonably." There was more involved in TVA v. Hill, 437 U.S. 153 (1978), than the continuned existence of a minnow, and there is more involved in this lawsuit than the location of some buildings.

Senator Lister Hill, who co-authored the TVA Act of 1933, described TVA's location of its headquarters in Knoxville as "nothing more or less, to be frank about the matter, than a very studied and

willful violation of the express language of the statute." Hearings Before the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong., 3d Sess., at 5233 (1938). He had this to say about the broader questions raised:

> I shall not delay you further, but I am wondering where a policy under which a government agency does not carry out the law, does not live up to the spirit and language of the statute, would lead us? With all of these multitudinous agencies and bureaus of the Government, if they are to willfully evade or violate the law, and consult their own personal pleasures or whims or desires, rather than the express will and direction of the Congress, where will we go? Id. at 5226.

Those are the ultimate questions in this lawsuit, and this Court should address them.

II. The Court of Appeals Incorrectly Decided the Federal Question

A. The Court of Appeals Ignored Important Evidence Concerning the Plain Meaning of the Term "Principal Office"

The district court concluded that the "principal office" language of §8(a) of the TVA Act of 1933, "is plain and unambiguous and that it clearly means the main headquarters of the corporation..." State of Alabama v. TVA, 467 F. Supp. at 798, pp. 27a-28a, infra. In overruling the district court on this point, the court of appeals ignored important evidence which establishes that "principal office" does plainly mean headquarters.

TVA's own usage establishes that when used to describe corporate offices or officers, "principal" means chief, main, or head. TVA refers to its General

Manager as "the principal TVA administrative officer." (R. 46, 152, 244) It proclaims Knoxville the location of its "principal administrative office." (R. 244-245) And a formal TVA resolution denotes Knoxville as the location of "the principle office of the legal department." See, p. 115a, infra.

There is other evidence that "principal office" as used in §8(a) of the Act plainly means headquarters. The General Accounting Office interpreted the provision to refer to the legally required location of TVA headquarters. It did so in a formal finding in its 1934 audit of TVA and again in testimony before a congressional committee in 1938. See, pp. 116a-120a, infra. The Justice Department also officially advised another congressional committee that §8(a)'s principal office meant headquarters. See,

pp. 167a-169a, infra. Senator Hugo Black thought the language plain enough to angrily label TVA's location of its headquarters in Knoxville, a "plain, palpable and open violation of the law." See, pp.124a-and 127a, infra.

Congressmen from other states have also recognized the plain meaning of §8(a). For example, a Kentucky congressman said on the floor of the House that TVA's location of its headquarters in Knoxville was "utter disobedience of the mandate of Congress," and explained that, "I do not care where they keep their office except that they ought to be made to obey the law." See, pp. 131a-133 a, infra. The meaning is so plain that even Tennessee's own congressmen have admitted over the years that §8(a) requires TVA's headquarters to be located in the Muscle Shoals vicinity. Senator McKellar candidly

admitted this, see, pp. 162a-164a, infra, as did Knoxville's own representative Howard Baker. See, pp.170a-171a, infra.

This Court has consistently held that, absent strong reasons to the contrary, a statute should be interpreted according to its plain meaning. United States v. Apfelbaum, 445 U.S. 115, 121 (1980); United States v. Clarke, 445 U.S. 253, 254 (1980); Burns v. Alcala, 420 U.S. 575, 580-581 (1975).

B. The Court of Appeals Misinterpreted the Significance of the Old Delaware Corporation Statute, Overlooked the Importance of the Pre-enactment Federal Precedents, and Misread an Important Treatise

In interpreting "principal office" the Court of Appeals placed great weight on the fact that the old Delaware

corporation statute required corporations to maintain a "principal office or place of business" in that state, yet relatively few Delaware corporations actually located their headquarters in that state. State of Alabama v. TVA, 636 F. 2d at 1065, pp. 54a-55a, infra. From that, the court below concluded that "principal office" did not mean headquarters.

That conclusion is a non sequiter stemming from the fact that the court below failed to recognize that "principal office or place of business" is obviously not the same thing as "principal office." If it were, there would be no point in adding the last four words to the phrase. The old Delaware provision meant that if a corporation did not maintain its headquarters ("principal office") in Delaware, then it must maintain "a place of business" there -- any place of

business, including a purely formal place whose only business was acceptance of service of process. Therefore, the court below misinterpreted the significance of the old Delaware corporation statute to this lawsuit.

In any event, the issue in this lawsuit is not the meaning of any particular phrase used in the corporation law of Delaware or of any other state. Rather, the issue is what the term "principal office" means as it is used in the TVA Act of 1933. Far more relevant than any state court statutes or precedents are the federal precedents existing at the time that Congress passed the TVA Act. In 1933, there were two and only two cases interpreting the meaning of "principal office" as used in a federal statute. They were Peters v. Detroit & Cleveland Nav. Co., 24 F. 2d 454, 455

(W.D. Ny. 1927); Caceres v. United States Shipping Bd., 299 F. 968, 970 (E.D. Ny. 1924). Both cases emphatically held that "principal office" as a federal statutory term means the actual headquarters of the corporation. See, State of Alabama v. TVA, 636 F. 2d at 1065-1066, pp. 56a-57a, infra. The Peters and Caceres cases are important, because a "legislative body generally uses a particular word with a consistent meaning in a given context," Erlenbaugh v. United States, 409 U.S. 239, 243 (1972), and when Congress in a later act uses a phrase which has been ascribed a particular meaning in an earlier federal act, Congress must be presumed to have intended that phrase to have the same meaning in the later legislation. See, e.g., District of Columbia v. Johnson & Wimsatt, 160 F. 2d 913, 915 (D.C. Cir. 1947).

The court of appeals cited 1 H. Oleck, Modern Corporation Law §3, at 13 (1958), for the proposition that, "'Principal office' means the place stated in the articles or certificate of incorporation as the address of the corporation" -- which the court recognized could be read to support either side of the argument. State of Alabama v. TVA, 636 F. 2d at 1065, pp. 53a, infra. But the court of appeals did not read far enough. Section 461, page 705 of that same edition of Oleck's treatise states:

> A domestic corporation's principal office is its headquarters, or the place where its chief business and affairs are transacted. Here, usually, is the office where its books and chief records are kept, where stockholder's meetings are held, and where its officers and directors and managers meet for the discussion and transaction of its important business; yet no one of these things is the sole or controlling test. ... (footnote to authorities omitted)

Therefore, Oleck's treatise is consistent with Fletcher's treatise, see, pp. 53a-54a, infra, and both of these important authorities on corporation law support Alabama's argument. Contrary to the conclusion of the court below, the major corporate law treatises do offer "a united front."

C. The Court of Appeals Disregarded Important Legislative History Concerning the Section 2(e) Free Residence Provision and Thereby Misinterpreted the Significance of that Provision

The court below quoted and discussed the free residence provision contained in §2(e) of the TVA Act of 1933, 16 U.S.C. §831a(e), State of Alabama v. TVA, 636 F. 2d at 1067, pp.63a-66a, infra, but overlooked some important legislative history concerning it.

Senator Norris, who co-authored the TVA Act with Representative Hill, stressed

the importance of the free residence provision in pre-enactment comments which make clear where Congress intended for TVA's headquarters to be located. When asked on the floor of the Senate about the adequacy of the salary provided in the act for TVA Board members, Senator Norris explained:

> Mr. President, I realize that there is very much disagreement as to whether we could get a man for $9,000 or $10,000 who could fill this place. I am of the opinion that we could. I do not believe there would be any difficulty. If a member of the board desires to live in Muscle Shoals --and I think it is a beautiful place to live -- he would have his house rent free, in addition to his salary. 77 Cong. Rec. 2687 (April 22, 1933) (emphasis added).

Unless Congress meant to mandate the location of TVA's actual headquarters with the principal office provision, Senator Norris' comments make no sense.

Provision of a free house amounts to a salary supplement only if the house can be used as a board member's sole or principal residence thus freeing him from house rent or mortgage payments. A free house near a purely formal office which serves merely as a depository for the service of process and which is located away from the actual headquarters would have no significant value as a salary supplement, because board members would still have to pay for a residence close to where they worked.

If Congress had merely "contemplated" that TVA's headquarters would be located near the free housing at Muscle Shoals, as the court below concluded, then Senator Norris would not have spoken with such assurance about the significance of §2(e)'s free housing provision as a salary supplement. Senator Norris did speak with

the assurance that TVA headquarters would be located near Muscle Shoals, because he, as co-author of the legislation, knew that §8(a)'s principal office provision mandated that TVA's headquarters be located there. The court below overlooked entirely Senator Norris' comments concerning the §2(e) free residence provision and thereby misinterpreted the significance of that provision.

As the court below pointed out, the initial House version of the TVA Act, sponsored by then-Representative Hill of Alabama, did expressly require that all TVA Board members reside in the vicinity of Muscle Shoals, Alabama. See, pp.64a-65a, infra. That provision, which would clearly have required that TVA's headquarters be located in the vicinity of Muscle Shoals was dropped in the conference committee in favor of the

Senate version of §2(e) which provided for free housing at Muscle Shoals, something not included in the House version. As Representative Sparkman explained:

> The House bill said, "All members shall reside in the vicinity of Muscle Shoals, Ala." but did not mention free rent. The Senate coupled the residence and free rent. When the conference agreement was reached naturally the Senate provision giving free rent as a part of the salary was accepted, the clear intention being that they should live there where the act said their work was to be. In the debate in the Senate after the bill had been adopted in the House Senator Norris was asked to explain any differences between the House bill and the one he was sponsoring. He explained that there were only two differences --transmission of power and manufacture of fertilizer. There was no difference as to the meaning to be gathered from these sections as to where the main offices should be and the directors should reside and work. ...

Hearings Before the Joint Committee on the Investigation of the Tennessee Valley

Authority, 75th Cong., 3rd Sess., at 3762 (1938) (emphasis added).

The court below failed to grasp the very important point that what happened to §2(e) in the conference committee, and the reaction -- or lack of reaction-- to it strongly evidence that the principal office provision mandated that the location of TVA's headquarters be in Muscle Shoals. The House version of §2(e) would indisputably have required the location of TVA headquarters within the Muscle Shoals vicinity, because it expressly required that the directors live there. If the final version of the TVA Act, which includes the §8(a) principal office provision, does not require TVA's headquarters to be located near Muscle Shoals, then a very significant change was made in §2(e) by the conference committee -- a change which is crucial to this

lawsuit. Because the court below concluded that TVA's headquarters are not required to be located near Muscle Shoals, its decision is based at least implicitly on the assumption that such a crucial change was effected in the conference committee.

There is no indication whatsoever that the conference committee intended such a change or that anyone in Congress thought that such a change had been made. Various fundamental differences between the House and Senate bills were pointed out during the day prior to enactment of the final version of the legislation. E.g., 77 Cong. Rec. 2635, 2638-2639, 2663. (1933).

No difference concerning the location of corporate headquarters was ever mentioned. The statement of the House managers which accompanied the conference

report pointed out more than 20 differences between the House and Senate bills and discussed how they were resolved in conference, 77 Cong. Rec. 3560-3561, but not the slightest mention was made of any difference between the two bills concerning the location of TVA headquarters and the offices of the board of directors.

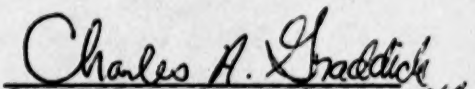
Representative Hill of Alabama, who was the author of the House bill, was also a member of the conference committee. If any change had been made by the conference committee in the net requirement that TVA locate its headquarters near Muscle Shoals, Representative Hill would certainly have noticed it, would have protested it vociferously, would have fought it, and in view of his powerful position would probably have been successful in having it changed back.

Neither Representative Hill nor Senator Norris, nor any member of the conference committee, nor any other congressmen noticed that any change had been made on the headquarters matter by the conference committee. The reason is that there was no net change in the requirement that TVA locate its headquarters in the Muscle Shoals area. The provision in the House version of §2(e) that the directors reside in the Muscle Shoals area was not essential to location of the headquarters. It was not essential because the principal office provisions, which were identical in both bills, achieved that mandate independently of §2(e). The court below disregarded this important pre-enactment legislative history and that omission contributed to its erroneous conclusion concerning the meaning of the principal office provision.

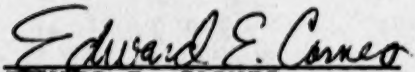
CONCLUSION

Because this case presents an important question of federal law which has not been, but should be, answered by this Court, and because the Court of Appeals decided it incorrectly, this Court should grant certiorari.

Respectfully submitted,



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ALABAMA ATTORNEY GENERAL



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Counsel of Record

CERTIFICATE OF SERVICE

I, Edward E. Carnes, a member of the Bar of the Supreme Court of the United States, do hereby certify that on this the 26th day of June, 1981, I did serve copies of this Petition and the accompanying Appendices on respondent, by placing in the United States Mail, first class postage prepaid, three copies properly addressed to the following counsel of record for respondent:

Honorable Herbert S. Sanger, Jr.
General Counsel
Tennessee Valley Authority
400 Commerce Avenue
Knoxville, Tennessee 37902

I further certify that I have served all parties required to be served.

Edward E. Carnes

EDWARD E. CARNES
ASSISTANT ALABAMA
ATTORNEY GENERAL

Office-Supreme Court, U.S.
FILED
JUN 29 1981
ALEXANDER L. STEVAS, CLERK

80-2197

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF ALABAMA, Ex Rel. Charles A. Graddick, as Attorney General of the State of Alabama,

Petitioner

v.

TENNESSEE VALLEY AUTHORITY, et al.,

Respondents

APPENDIX

(Volume I)

TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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D	75a	Court of Appeals Judgment Entry
E	77a	Court of Appeals Order Denying Rehearing

APPENDIX A

STATE OF ALABAMA ex rel. William J. BAXLEY, as Attorney General of the State of Alabama, Plaintiff,

v.

TENNESSEE VALLEY AUTHORITY, Aubrey J. Wagner as Chairman of the Board of Directors of the TVA, et al., Defendants.

Civ. A. No. 77-M-0377.

United States District Court, N. D. Alabama, Northwestern Division.

Jan. 25, 1979.

MEMORANDUM OPINION

McFADDEN, Chief Judge.

The State of Alabama, on the relation of its Attorney General, in this action against the Tennessee Valley Authority, and its board of directors (TVA), seeks a declaration that Section 8(a) of the Tennessee Valley Authority Act, 16 U.S.C. § 831g(a) requires TVA to locate its administrative and executive offices at Muscle Shoals, Alabama, and an injunction restraining TVA

from maintaining such offices at a place other than Muscle Shoals. Jurisdiction exists under 28 U.S.C. § 1331.

Pending before the court are cross-motions for summary judgment. The issues raised by these motions are whether Alabama has standing to bring this action, whether the suit is barred by the doctrine of res judicata, and finally, whether section 8(a) of the Act requires TVA to locate its main offices at Muscle Shoals, Alabama.

I. STANDING

Alabama alleges that it has standing to bring this action in both its proprietary capacity, and in its representative capacity as parens patriae for its citizens.

A. The State as Parens Patriae.

TVA first contends that Massachusetts v. Mellon, 262 U.S. 447, 43 S. Ct. 597, 67

L. Ed. 1078 (1923), denies Alabama standing, in its parens patriae capacity, to sue a federal agency:

> While the state, under some circumstances, may sue for the protection of its citizens, . . . it is no part of its duty or power to enforce their rights in respect of their relations with the Federal Government. In that field it is the United States, and not the State, which represents them as parens patriae.

Id. at 485-86, 43 S. Ct. at 600. Accord South Carolina v. Katzenbach, 383 U.S. 301, 324, 86 S. Ct. 803, 15 L. Ed. 2d 769 (1966); Com. of Pa. by Shapp v. Kleppe, 174 U.S. App. D.C. 441, 533 F. 2d 668 (1976), cert. denied 429 U.S. 977, 97 S. Ct. 485, 50 L. Ed. 2d 584 (1976).

In both Mellon and Katzenbach, the plaintiff states challenged the constitutionality of federal statutes. Standing

in those circumstances would be "clearly and obviously a fundamental threat to the federal sovereign power." Com. of Pa. by Shapp v. Kleppe, supra, 174 U.S. App. D.C. at 455, 533 F. 2d at 682 (Lumbard, J., dissenting). Alabama, however, "seeks only to vindicate the will of the people as it has been expressed by their duly elected representatives in the national legislature." Id. Therefore, the federalism considerations present in those actions are absent here. Compare Georgia v. Pennsylvania R.R., 324 U.S. 439, 445, 65 S. Ct. 716, 89 L. Ed. 1051 (1945).

In Washington Utilities & Transp. Com'r. v. F. C. C., 513 F. 2d 1142 (9th Cir. 1975), cert. denied 423 U.S. 836, 96 S. Ct. 62, 46 L. Ed. 2d 54 (1975), the court found this distinction to be dispositive and held that a state, through one of its agencies, had parens patriae standing to challenge federal agency action:

> WUTC does not attack the constitutionality of the Communications Act on any ground; rather, it relies upon the federal statute and seeks to vindicate the congressional will by presenting what it asserts to be a violation of that statute by the administrative agency charged with its enforcement.

Id. at 1153.

Other cases support parens patriae standing in this case. In State of Florida v. Weinberger, 492 F. 2d 488 (5th Cir. 1974), the court held that Florida, on behalf of its citizens, had standing to challenge the Secretary of HEW's power to enact certain regulations under the Medicaid Act, 42 U.S.C. §1396A. In State of New York v. United States, 65 F. Supp. 856 (S.D.N.Y. 1946) (three-judge court), affirmed 331 U.S. 284, 67 S. Ct. 1207, 91 L. Ed. 1492 (1947), the court

found that the state had standing as parens patriae to challenge an alleged misapplication of a federal statute by the Interstate Commerce Commission.

In the court's view the rationale of Massachusetts v. Mellon, supra, is not applicable to the facts in the present case cand there is no constitutional barrier to Alabama acting as parens patriae for its citizens.

There is, however, an inherent limitation on the legitimacy of any action brought by a state as parens patriae. In Pennsylvania v. New Jersey, 426 U.S. 660, 96 S. Ct. 2333, 49 L. Ed. 2d 124 (1976), the court noted that:

> It has, however, become settled doctrine that a State has standing to sue [as parens patriae] only when its sovereign or quasi-sovereign interests are implicated and it is not merely litigating

as a volunteer the personal claims of its citizens.

Id. at 665, 96 S. Ct. at 2336.

Quasi-sovereign interests are implicated where the injury for which redress is sought affects the general welfare of the state, or its citizens at large. Kansas v. Colorado, 206 U.S. 46, 99, 27 S. Ct. 655, 51 L. Ed. 956 (1907); Louisiana v. Texas, 176 U.S. 1, 19, 20 S. Ct. 251, 44 L. Ed. 347 (1900).

Alabama alleges that the location of TVA at Muscle Shoals would benefit the general welfare of its citizens and promote the economic well-being of the state by the creation of thousands of jobs in the Muscle Shoals area, and the injection of millions of dollars into the state economy. The court is of the opinion that these allegations are sufficient to support a finding of injury to the quasi-sovereign interests of Alabama.

B. The Proprietary Interests of the State.

Alabama's proprietary interests are alleged to have been harmed by the loss of tax revenues, the denial of a statutory right conferred by section 8(a), and the loss of honor and prestige resulting from the failure of TVA to locate its headquarters at Muscle Shoals.

A state has at least the same right of access to the court as any other institution to seek redress for injuries sustained in its proprietary capacity. Com. of Pa., by Shapp v. Kleppe, supra. See also Hawaii v. Standard Oil Company of California, 405 U.S. 251, 92 S. Ct. 885, 31 L. Ed. 2d 84 (1972).

The court agrees with the statement in Com. of Pa., by Shapp v. Kleppe, supra, 174 U.S. App. D.C. at 445, 533 F. 2d at 672, that an "allegation that tax revenues were reduced embodies a comprehensible

harm to the economic interests of the state government," and therefore is of the opinion that Alabama, in its proprietary capacity, has alleged a judicially cognizable claim for relief. Compare, Massachusetts v. Mellon, supra, at 485. Since only injunctive and declaratory relief is sought, the court need not decide whether the alleged denial of a statutory right or loss of honor and prestige are redressable injuries.

C. Constitutional and Prudential Limitations on Standing.

Having determined that the identity of the parties is no bar to the adjudication of the claims set forth in the complaint, consideration must now be given to those standing questions applicable to any suit brought in a federal court.

Under article III of the Constitution of the United States, the federal judicial power extends only to "cases" or "controversies". Muskrat v. United States, 219

U.S. 346, 356, 31 S. Ct. 250, 55 L. Ed. 246 (1911).

> In terms of Article III limitations on federal court jurisdiction, the question of standing is related only to whether the dispute sought to be adjudicated will be presented in an adversary context and in a form historically viewed as capable of judicial resolution.

Flast v. Cohen, 392 U.S. 83, 101, 88 S. Ct. 1942, 1953, 20 L. Ed. 2d 947 (1968).

A recent exposition of the Supreme Court concerning the Article III requisites of standing is found in Duke Power Co. v. Carolina Environmental Study Group, Inc., 438 U.S. 59, 98 S. Ct. 2620, 57 L. Ed. 2d 595 (1978):

> The essence of the standing inquiry is whether the parties seeking to invoke the court's jurisdiction have "alleged such a personal stake in the outcome of

the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Baker v. Carr, 369 U.S. 186, 204, 82 S. Ct. 691, 703, 7 L. Ed. 2d 663 (1962). As refined by subsequent reformulation, this requirement of a "personal stake" has come to be understood to require not only a "distinct and palpable injury," to the plaintiff, Warth v. Seldin, 422 U.S. 490, 501, 95 S. Ct. 2197, 45 L. Ed. 2d 343, but also a "fairly traceable" casual connection between the claimed injury and the challenged conduct. Arlington Heights v. Metropolitan Housing Corp., 429 U.S. 252, 261, 97 S. Ct. 555, 50 L. Ed. 2d 450 (1977). See also Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42, 96 S. Ct. 1917,

48 L. Ed. 2d 450 (1976); Linda R. S. v. Richard D., 410 U.S. 614, 617, 93 S. Ct. 1146, 35 L. Ed. 2d 536 (1973).

Id. at 2630.

Prior to the submission of the pending motions, the court granted TVA's request for a protective order against answering interrogatories seeking to discover the number of persons employed by TVA and the dollar amount of the payroll allocable to them. TVA, however, has not disputed the factual allegations of the complaint, and properly recognizes that it is the nature of the claimed injury, and not the amount thereof which is relevant to the standing inquiry. United States v. SCRAP, 412 U.S. 669, 689, n. 14, 93 S. Ct. 2405, 37 L. Ed. 2d 254 (1973).

It is common knowledge that the presence of the headquarters of an organization the size of TVA would generate tax revenues directly and indirectly to the state

and have a significant economic impact on the state. Clearly, the absence of the jobs the headquarters would provide and money thereby generated from Alabama's economic system is a "direct and palpable injury" to its quasi-sovereign interest in the general welfare of its citizens.

The court finds, therefore, that Alabama, as parens patriae for its citizens, and in its own right as an entity possessing proprietary interest, has satisfied the "direct injury" test for standing under article III.

The other article III requirement for standing is a showing that there is "a 'substantial likelihood' that the relief requested will redress the injury claimed." Duke Power Co. v. Carolina Environmental Study Group, Inc., supra, 98 S. Ct. at 2631 n. 20. See also, Regents of the University of California v. Bakke, 438

U.S. 265, 98 S. Ct. 2733, 2743 n. 14, 57 L. Ed. 2d 750 (1978). There is no doubt that a judicial decree requiring TVA to locate its headquarters at Muscle Shoals will result in the influx of jobs and dollars into the state economy, and will result in increased tax revenues for the state. The court is of the opinion that the "redressability" requirement has been met.

TVA has steadfastly asserted that Alabama must also demonstrate that its interests which have been injured are within the "zone of interests" meant to be protected by the TVA Act, citing Data Processing Service v. Camp, 397 U.S. 150, 90 S. Ct. 827, 25 L. Ed. 2d 184 (1970), and Flast v. Cohen, 392 U.S. 83, 88 S. Ct. 1942, 20 L. Ed. 2d 947 (1968).

Some commentators have questioned the continued validity of the "zone of interests" test. See, e.g., K. Davis,

Administrative Law of the Seventies, §22.02-11, at 184-187 (1978 Supp.); Sedler, Standing Justiciability, and All That: A Behavioral Analysis, 25 Vand. L. Rev. 479, 486 (1972). An analysis of the opinion in Duke Power Co. v. Carolina Environmental Study Group, Inc., supra, strongly suggests that that test has been abandoned. In Duke, the defendants argued that in order to have standing, the plaintiffs should have been required to demonstrate a connection between the rights being asserted and the injuries suffered. The court declined to apply a Flast-type nexus test and held:

> We . . . cannot accept the contention that, outside the context of taxpayers' suits, a litigant must demonstrate anything more than injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury to satisfy the "case

or controversy" requirement of Art. III.

98 S. Ct. at 2634.

In the court's opinion, Alabama has satisfied the article III requirements for standing.

TVA's final objection to Alabama's standing to bring this action is that the injuries it complains of are no more than generalized grievances which are equally shared by all citizens of the United States, and therefore fall within the prudential limitations on the exercise of federal jurisdiction. See Warth v. Seldin, 422 U.S. 490, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975); Schlesinger v. Reservists to Stop the War, 418 U.S. 208, 94 S. Ct. 2925, 41 L. Ed. 2d 706 (1974); United States v. Richardson, 418 U.S. 166, 94 S. Ct. 2940, 41 L. Ed. 2d 678 (1974).

The Supreme Court, however, has recently de-emphasized the prudential limitations

on the classes of persons who may properly challenge governmental action:

> Where a party champions his own rights, and where the injury alleged is a concrete and particularized one which will be prevented or redressed by the relief requested, the basic practical and prudential concerns underlying the standing doctrine are generally satisfied when the constitutional requisites are met. (Citations omitted)

Duke Power Co. v. Carolina Environmental Study Group, Inc., supra, 98 S. Ct. at 2634.

Regardless of the weight to be given to general prudential concerns, it appears to the court that TVA has perhaps misconstrued the nature of the grievance asserted by Alabama. The fact that all national citizens have an idealogical interest in a federal agency's compliance with the law, First National Bank v.

Missouri, 263 U.S. 640, 666-67, 44 S. Ct. 212, 68 L. Ed. 486 (1924) (Van Devanter, J. dissenting), does not preclude a readily identifiable portion of that citizenry from asserting a distinct and particularized harm. Alabama has shown interests which are sufficiently apart from a generalized interest in good government to overcome any duty on the part of this court to stay its hand on prudential grounds.

II. RES JUDICATA

TVA has interposed the judgment of the court in Frahn v. Tennessee Valley Authority, 41 F. Supp. 83 (N.D. Ala. 1941), as a bar to the present suit. In that case, an action was brought against TVA by citizens and taxpayers of the Muscle Shoals area, on behalf of themselves and others similarly situated, seeking a declaration that TVA was violating section

8(a) of the TVA Act by not locating its general headquarters at Muscle Shoals.

Alabama maintains that Frahn does not preclude this action for two reasons: (1) the section 8(a) issue was not decided there, and (2) the State of Alabama was not a party to that case.

The court in Frahn held that it lacked jurisdiction to interpret section 8(a) because the complaint failed "to present a justiciable controversy." 41 F. Supp. at 86. In reaching this conclusion the court found that the plaintiffs lacked standing to bring the action, and that the interpretation placed on section 8(a) by TVA was not so unreasonable as to require judicial interference. Alabama argues that the holding of non-justiciability encompasses only the lack of standing, and the finding that the interpretation of section 8(a) was committed to administrative discretion is dictum.

The court is of the opinion that this is true and that Judge Murphree's finding of lack of a justiciable controversy was based on the lack of standing. If plaintiffs lacked the standing to bring the action, the court's comments with respect to the statutory interpretation question were dictum. However, even if, as TVA contends, the decision was based on two grounds—standing and the lack of power to contest the discretion of the executive officers of the government in respect to the interpretation of the statutes—this action is not necessarily precluded by Frahn. Alabama could not be bound by that judgment under res judicata principles unless it was a party to the proceeding. Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 89 S. Ct. 1562, 23 L. Ed. 2d 129 (1969); State of Texas v. Chuoke, 154 F. 2d 1 (5th Cir. 1946), cert. denied 329 U.S. 714, 67 S. Ct. 45, 91 L. Ed. 620 (1946).

TVA does not pretend that Alabama was a named plaintiff in Frahn, but maintains that it should be bound by the judgment there because Frahn was a class action on behalf of all Alabama citizens. The court cannot accept this contention. Besides the absence of any indication that a plaintiff class was ever certified by the Frahn court, in the present action Alabama has sued on its own right, asserting injury to its proprietary and quasi-sovereign interests. The court is of the opinion that these interests are not so identical to those of the putative class of plaintiffs in Frahn as to make the judgment in that case a bar to the present proceedings even if the question was there decided. Compare Dufee v. Duke, 375 U.S. 106, 84 S. Ct. 242, 11 L. Ed. 2d 186 (1963).

III. THE "PRINCIPAL OFFICE" PROVISION OF SECTION 8(a)

Section 8(a) of the Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831g(a), provides:

> The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

Alabama contends that this provision requires TVA to locate its administrative and operational headquarters at Muscle Shoals. TVA submits that section 8(a) only requires that it maintain an office to accept service of process at Muscle Shoals. This is essentially what TVA does, with its administrative and operational

headquarters being maintained elsewhere, principally in Knoxville, Tennessee.

As a threshold matter, the court must deal with TVA's assertion that it has discretion to interpret the meaning of the principal office provision. The asserted TVA grant of discretion to choose the location of its headquarters is based on Section 3 of the Act, which authorizes the Board to:

> appoint such managers, assistant managers, officers, employees, attorneys, and agents as are necessary for the transaction of business . . . and provide a system of organization to fix responsibility and promote efficiency.

16 U.S.C. § 831b.

The court is not persuaded by this argument. In Morton v. Ruiz, 415 U.S. 199, 94 S. Ct. 1055, 39 L. Ed. 2d 270 (1974), the court noted that the Secretary of the Interior had by statute, been granted

broad managerial authority over Indian affairs. Id. at 231 n. 26, 94 S. Ct. 1055. However, the court rejected the administrative interpretation of the statute in question, holding that in order for an agency interpretation to be granted deference it must be consistent with the congressional purpose. Id. at 237, 94 S. Ct. 1055.

The principle of judicial deference to the interpretation given a statute by those charged with its enforcement has long been recognized. See, e.g., Red Lion Broadcasting Co. v. F. C. C., 395 U.S. 367, 89 S. Ct. 1794, 23 L. Ed. 2d 371 (1969); Zemel v. Rush, 381 U.S. 1, 85 S. Ct. 1271, 14 L. Ed. 2d 179 (1965); Houghton v. Payne, 194 U.S. 88, 24 S. Ct. 590, 48 L. Ed. 888 (1904). However, a court will not defer to the administrative construction where it is shown that such construction is not in accordance with

the Congressional intent behind the statute. Morton v. Ruiz, supra; Espinoza v. Farah Manufacturing Co., Inc., 414 U.S. 86, 94 S. Ct. 334, 38 L. Ed. 2d 287 (1973); Houghton v. Payne, supra. And where the dispute concerns the meaning of a statutory term as opposed to a policy decision requiring exercise of an agency's expertise, the courts will not abdicate their primary function of interpreting the law. Barlow v. Collins, 397 U.S. 159, 90 S. Ct. 832, 25 L. Ed. 2d 192 (1970); Texas Gas Transmission Corp. v. Shell Oil Co., 363 U.S. 263, 80 S. Ct. 1122, 4 L. Ed. 2d 1208 (1960).

The phrase "principal office" is a legal term of art, and its correct interpretation is a matter for judicial determination. Congress is presumed to know the judicially established meaning of the words it uses in statutory provisions. United States v. Merriam, 263

U.S. 179, 44 S. Ct. 69, 68 L. Ed. 240 (1923).

The primary rule of statutory construction is to ascertain and effectuate the legislative intent. 2A Sands, Sutherland Statutory Construction, § 45.05, at 16 (4th ed. 1973). And where a statute is unambiguous, this can be accomplished by examination of the language adopted by the legislature. Caminetti v. United States, 242 U.S. 470, 37 S. Ct. 192, 61 L. Ed. 442 (1917).

Alabama asserts that no ambiguity exists in the language of section 8(a), and that the term "principal office" clearly means the main headquarters of a corporation. See, e.g., Peters v. Detroit & Cleveland Nav. Co., 24 F. 2d 454 (W.D. N.Y. 1927); Caceres v. United States Shipping Bd. Emergency Fleet Co., 299 F. 968 (E.D.N.Y. 1924); Mason & Hanger Co. v. Sharon, 231 F. 861 (2d Cir. 1916),

cert. denied 241 U.S. 670, 36 S. Ct. 554, 60 L. Ed. 1230 (1916); Oleck, Modern Corporation Law, § 461, at 705 (1958). TVA, however, argues that the term "principal office," when used in the corporate context, refers to an address for service of process. There is some authority for this position. See, e.g., 40 Op. Atty. Gen. 115 (1941); 18 C.J.S. Corporations § 177 (1939); 8 W. Fletcher, Cyclopedia of the Law of Private Corporations ¶4046, at 483-84 (1966); Oleck, Modern Corporation Law, supra, § 3, at 13.

The court, nevertheless, is of the view that the language of the statute is plain and unambiguous and that it clearly means the main headquarters of the corporation, particularly when read in conjunction with section 2(e) of the TVA Act, 16 U.S.C. § 831a(e), which provides:

> Each of the members of the board shall be a citizen of the United States, and

shall receive a salary at the rate of $10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this Act [16 USCS § 831 et seq.]. No member of said board shall, during his continuance in office, be engaged in any other business, but each member shall devote himself to the work of the Corporation.

82 C.J.S. Statutes, § 345, at 699-700 (1953), states:

> In construing a statute, the intention or purpose of the legislature, or the meaning of a statute is to be determined, not from any single part, portion or section . . . or from particular or specific expressions or terms . . . but from a general consideration or view of the act as a whole or in its entirety. (Footnotes omitted)

And wherever reasonable, the court will adopt that construction which gives effect to all provisions of the statute. Meltzer v. Board of Public Instruction of Orange County, Fla., 548 F. 2d 559 (5th Cir. 1977); 2A Sands, Sutherland Statutory Construction, supra, § 46.06.

It is apparent to the court that the free residence provision of section 2(e) would be meaningless if section 8(a) were construed to allow TVA to locate its main headquarters at a place distant from Muscle Shoals.

Assuming, however, that the language is ambiguous, the legislative history preceding the enactment of the TVA Act of 1933 also points to the conclusion that Congress intended the headquarters of TVA to be located at Muscle Shoals.

The pre-enactment remarks of Senator Norris, the co-author of the TVA Act, clearly indicate that the free residence was intended to be a salary supplement for TVA directors:

> I realize that there is very much disagreement as to whether we could get a man for $9,000 or $10,000 who could fill this place. I am of the opinion that we could. I do not believe there would be any difficulty. If a member of the board desires to live in Muscle Shoals—and I think it is a beautiful place to live—he would have his house rent free, in addition to his salary.

77 Cong. Rec. 2687 (1933).

Although never enacted into law because of Presidential veto, the Muscle Shoals Act of 1928, H.R. 7744, 70th Cong., 1st Sess. (1927), and the Muscle Shoals Act of 1931, S.J. Res. No. 49, 71st Cong., 3d Sess. (1931), both sought to establish the Muscle Shoals Corporation of the United States to oversee the federal government's investment in nitrate and electrical plants located at Muscle Shoals. Section 7(a) of both acts contained language identical to that which was eventually enacted as section 8(a) of the TVA Act of 1933.

Lister Hill was a member of the House Committee on Military Affairs which drafted the 1928 Act. H.R. Rep. No. 1095, 70th Cong., 1st Sess. (1928). He later testified concerning the purpose of the principal office provision:

> The idea and the purpose of the committee in putting that language in

the bill was that the actual headquarters, that those whose business it was to carry on the permanent work, to set the policies, to be the chiefs and the heads, should have their office at Muscle Shoals, Ala.

And in that connection, let me say that back in 1928 the Committee on Military Affairs of the House had a full picture of the situation, in many ways, just about as full as we have today, for this reason; that the engineers, the Army Engineers, at that time had completed the finest and most detailed survey of the Tennessee River that has ever been made of any river in the whole world, and we had that survey of the engineers before us at the time we put this langauge in the bill.

We knew what we were doing; we knew what we wanted to do. We had the facts

that Senator Bankhead has given us this morning about the geographical importance; the fact that after all is said and done, Muscle Shoals is, so to speak, the center of gravity of any activity in that whole great valley.

All of the facts showed that Muscle Shoals was a logical place, that it was a feasible place, and that economy and efficiency dictated that the headquarters be placed there.

I was a member of the Committee on Military Affairs when that language was written into the bill. . . . Hearings Before the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong., at 5224 (1938).

Although the Muscle Shoals Act of 1928 was never enacted into law, given the identity of the language of its principal office provision to that of section

8(a) of the TVA Act, it is fair to infer that the comments of Representative Hill are equally applicable to both provisions. Compare FEA v. Algonquin Sng., Inc., 426 U.S. 548, 652-64, 96 S. Ct. 2295, 49 L. Ed. 2d 49 (1976). And since Senator Norris and Representative Hill were co-sponsors of the TVA Act, their statements are entitled to great weight, even though Alabama, represented by Representative Hill, stood to benefit from their reading of the statute. Id. at 564 n. 17, 96 S. Ct. 2295.

TVA places great reliance on the conclusion reached in the Report of the Joint Committee on the Investigation of the Tennessee Valley Authority, 76th Cong., 1st Sess. 9 (1939):

> The committee finds that the Authority has legally complied with that part of subsection (a) of section 8 of the act, as amended, which requires that

> the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Ala. However, on account of the substantial difference of opinion on the question, the committee recommends that, in view of the approaching completion of the dams, Congress give immediate consideration to clarifying the issue.

Three members of the nine-man committee disagreed with the majority report on this issue and concluded that TVA's maintenance of its headquarters in Knoxville was "a palpable violation of this mandatory provision of the TVA Act." Id. at 331.

The result reached by this committee, along with the fact that Congress has never amended section 8(a), argues TVA, constitutes express approval of its interpretation of the principal office provisions. The Supreme Court has noted,

however, that "[t]he views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." United States v. Philadelphia Nat'l Bank, 374 U.S. 321, 348-49, 83 S. Ct. 1715, 1733, 10 L. Ed. 2d 915 (1963), quoting United States v. Price, 361 U.S. 304, 313, 80 S. Ct. 326, 4 L. Ed. 334 (1960). See also, Teamsters v. United States, 431 U.S. 324, 97 S. Ct. 1843, 52 L. Ed. 2d 396 (1977).

TVA further supports its argument that the administrative interpretation is in accordance with the Congressional intent by pointing out that Congress has continued to appropriate funds to maintain TVA offices not located in Muscle Shoals, and in fact has specifically refused to appropriate funds for the purpose of relocating TVA offices. Act of July 27, 1953, Ch. 241, 67 Stat. 190.

The Supreme Court, however, has recently

cautioned against reliance on subsequent appropriation acts in determining the intent of the legislature which enacted the underlying statute. Tennessee Valley Authority v. Hill, 437 U.S. 153, 98 S. Ct. 2279, 2299-2300, 57 L. Ed. 2d 117 (1978). Moreover, the probative value of appropriation measures here diminishes in view of the fact that Congress has refused to pass proposed permanent amendments to section 8(a) which would have eliminated Muscle Shoals as the situs of the principal office. See S. 1207, 79th Cong., 1st Sess. (1945), and H.R. 4146, 83d Cong., 1st Sess. (1953).

As was noted earlier in this opinion, the long-standing administrative interpretation of section 8(a) is to be accorded great weight in seeking to determine the proper construction of the Act. But is equally clear that it is not the controlling consideration:

> Contemporaneous and practical interpretation serve as another aid of statutory construction, and therefore must be weighed against the other factors pertinent to the determination of legislative intent.

2A Sands, Sutherland Statutory Construction, supra, § 49.04, at 235.

The court is of the view that the plain reading of the statute requires a finding that Congress fully intended the primary administrative and operational headquarters of TVA to be located in the Muscle Shoals area. The court is further of the view that even if the language were to be considered ambiguous, the employment of other means of statutory interpretation dictates the same result.

Accordingly, TVA's motion for summary judgment is due to be denied and that of the plaintiff granted.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHWESTERN DIVISION

STATE OF ALABAMA, EX REL. WILLIAM J. BAXLEY	)	
Plaintiff	)	
- v -	)	C.A. 77-M-0377
TENNESSEE VALLEY AUTHORITY et al.	)	
Defendants	)	

ORDER

This cause came to the court on the following motions:

(1) The motion of defendants to dismiss the original complaint or, in the alternative, for summary judgment;

(2) The motion of defendants to dismiss the amended complaint or, in the alternative, for summary judgment; and

(3) The motion of plaintiff for summary judgment.

Defendants' second motion renders moot their first motion. Accordingly, it is hereby ORDERED that defendants' motion to dismiss the original complaint or, in the alternative, for summary judgment is overruled.

In accordance with the memorandum opinion entered contemporaneously:

It is hereby

ORDERED, ADJUDGED and DECREED that the motion of defendants to dismiss the amended complaint or, in the alternative, for summary judgment is overruled;

It is further ORDERED that the motion of plaintiff for summary judgment is granted;

It is further ORDERED, ADJUDGED and DECLARED that defendants are required by law to locate and maintain the headquarters of the Tennessee Valley Authority in the immediate vicinity of Muscle Shoals, Alabama, and that defendants have

failed to do so;

It is further ORDERED that defendants are enjoined from locating or maintaining the headquarters of the Tennessee Valley Authority in any place other than in the immediate vicinity of Muscle Shoals, Alabama.

Costs are hereby taxed to defendants.

Done this 25th day of January, 1979.

/s/ Frank H. McFadden
Chief Judge

APPENDIX C

STATE OF ALABAMA ex rel. Charles A. GRADDICK, as Attorney General of the State of Alabama, Plaintiff-Appellee,

v.

TENNESSEE VALLEY AUTHORITY et al., Defendants-Appellants.

No. 79-1283.

United States Court of Appeals, Fifth Circuit.

Feb. 13, 1981.

Appeal from the United States District Court for the Northern District of Alabama.

Before GEE, FAY and RANDALL, Circuit Judges.

GEE, Circuit Judge:

The Tennessee Valley Authority ("TVA" or "Authority") appeals from an order of the United States District Court for the Northern District of Alabama requiring that its "headquarters" in Knoxville, Tennessee, be packed up and moved to Muscle Shoals, Alabama. The district judge found

this relocation necessary to bring TVA into compliance with section 8(a) of the Tennessee Valley Authority Act of 1933, 16 U.S.C. § 831g(a), which reads in pertinent part: "The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama."[1]

Since its creation by act of Congress in 1933, the TVA has maintained offices in a number of locations, including Knoxville, Chattanooga, Muscle Shoals, and Washington, D.C., in order to facilitate performance of its statutory purposes. It is undisputed that the central administration of the corporation has been located from its earliest days in Knoxville. Members of

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[1]The full text of the section runs: "The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the Northern Judicial District of Alabama within the meaning of the laws of the United States relating to the venue of civil suits."

the board of directors maintain their offices in Knoxville; most of their meetings are conducted there; the central offices and directors of a number of the corporation's major divisions are located there. A smaller office is maintained in Muscle Shoals; the administrative staffs of several divisions are located there. The TVA makes no pretense that these Alabama activities comprise those that would be carried on at the administrative headquarters of a corporation.

Dissatisfied with this arrangement, the State of Alabama filed suit in 1977[2] to force the TVA to relocate its central administration in Muscle Shoals. In lieu

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[2]The TVA did not assert the equitable defense of laches to Alabama's suit for injunctive relief, and thus that affirmative defense is unavailable as a possible ground of decision here. Beyond noting the passage of 44 years between the establishment of the headquarters in Knoxville and the filing of this lawsuit, this court will not further consider that delay.

of an answer to this complaint, the TVA filed a motion for summary judgment.[3] Alabama filed a cross motion for summary judgment, which was granted by the court. In a January 25, 1979, order the judge enjoined the TVA "from locating or maintaining the headquarters of the Tennessee Valley Authority in any place other than in the immediate vicinity of Muscle Shoals, Alabama." It is from this order of the district court that TVA now appeals.

Two of the grounds for reversal urged by TVA need delay us only slightly, for we

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[3]The TVA proposed several grounds for summary judgment in its motion, arguments raised again on appeal as grounds for reversal of the adverse trial court judgment: (1) that Alabama lacked standing to assert TVA's alleged non-compliance with the statutory provision on location of its "principal office"; (2) that Frahn v. TVA, 41 F. Supp. 83 (N.D. Ala. 1941), an unsuccessful challenge to the Knoxville location earlier lodged by Alabama citizens, was res judicata of this challenge by the state; and (3) that the term "principal office" referred solely to a formal corporate office, denominated in the Act simply as a place for receipt of service of process, a location where the elusive corporate entity could always be found.

find that the court below correctly disposed of TVA's arguments on these points. That finding is slim confort to appellee, for the judgment falls anyway on the third ground, discussed in detail below.

The Authority's assertions that Alabama lacked standing and that the state's claim was barred by the earlier decision in Frahn v. TVA, 41 F. Supp. 83 (N.D. Ala. 1941), were sufficiently dealt with below. The amicus brief filed with this court by the State of Tennessee urging reversal is itself an eloquent evocation of Alabama's alleged injury in fact; the injury is certainly sufficient to insure that there exists the concrete adverseness of positions necessary to proper clarification of the issues. Alabama has standing to challenge the TVA's actions here. In Frahn a group of Alabama residents filed suit to remedy what they considered the TVA's intransigent refusal

to obey the law. The district judge granted the Authority's Rule 12(b)(6) motion on the ground that these private individuals lacked standing to complain of TVA's behavior. The court additionally remarked that the determination of placement of its corporate headquarters was properly left to the TVA. The Authority's attempt to skewer Alabama on language in Frahn, even if this court were to find the substantive issue involved in this case there to have been resolved, must fail. Alabama was neither a party to the earlier lawsuit, nor is there an identity of interest with those individuals who were plaintiffs. In addition to its parens patriae interest, which arguably can be no different substantively from that of its citizens, the state asserts a proprietary interest distinct from that of any individual or group of its citizens.

Our findings that the district judge sufficiently resolved difficult questions of standing and res judicata can give Alabama only brief solace; fully entitled to bring this lawsuit, the state is not, however, entitled to prevail. The sole question for decision here, correctly recognized by the district court, is the meaning of the "principal office" provision of 16 U.S.C. § 831g(a). Summary judgment was thus the appropriate resolution of this matter; the victory simply went to the wrong contestant. This court must now consider the legal effect of the statutory requirement that the TVA maintain its "principal office in the immediate vicinity of Muscle Shoals, Alabama."

Contrary to Alabama's assertions, this court finds the "plain meaning" of the statutory language not to be all that plain. That application of a dictionary to the phrase necessarily results in the

conclusion that certain (but not all) administrative functions of the Authority should properly exist only in Muscle Shoals is not ineluctably clear. As a legal term of art (if such it be), "principal office" lacks a certain definiteness in its connotation; courts and commentators confuse and differently distinguish phrases such as "principal office," "registered office," and "principal place of business."[4]

Confronted with a provision the reading of which we find ambiguous, this court must turn to familiar but nevertheless slippery tools of statutory construction. Before doing so, however, it is

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[4]The comment to the revised Model Business Corporations Act indicates that confusion between the various terms typically used in state corporation laws prompted the drafters to settle on "registered office" as the favored term for the office named in the corporate chapter as a place where the corporation could always be found.

important to clarify what this exercise must entail. The TVA asserts that whatever the phrase actually means, the Authority's consistent forty-year reading of it is a reasonable one and that proper judicial deference to agency expertise would prompt this court to leave the reasonable interpretation undisturbed. That deferential solution would spare this court much of the following exercise and for that reason, among others, is a facially attractive one. That conclusion is, however, fundamentally flawed. The proposition the TVA here urges is appropriate in situations where the agency's challenged action in some way implicates its special expertise. Cf. Young v. TVA, 606 F. 2d 143, 145 (6th Cir. 1979) (question of TVA authority to construct power plant outside watershed of Tennessee River; agency construction of statutory provision upheld in part because "[t]he

construction and operation of power plants and the distribution of electric energy generated therefrom requires expertise which should be accorded deference by the courts"). This court is hard pressed to arrive at reasons why the TVA's interpretation of a purely legal point here should be accorded any weight at all, much less rendered the deference suggested. Cf. Coca-Cola Co. v. Atchison, Topeka & Santa Fe Railway Co., 608 F. 2d 213, 222 (5th Cir. 1979) ("[n]evertheless, even where the issue is one of pure law, such as interpretation of contracts, tariffs, regulations and statutes, room still is present for deference to the views of administrative agencies, particularly where the understanding of the problem is enhanced by the agency's expert understanding of the industry" (emphasis added)). Congress did not commit to the TVA's judgment the location of its principal office;

that decision is chiseled in stone at 16 U.S.C. § 831g(a). If this court were to arrive at the legal determination that "principal office" meant administrative headquarters, then, absent congressional amendment of that provision,[5] the reasonableness of TVA's error could not save it from Muscle Shoals. The question is properly one for the court to decide, and so we turn to it. We conclude that TVA's interpretation of the "principal office" provision is not only reasonable, it is correct.

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[5]A number of proposed amendments to § 8(a) have surfaced over the years, only to slip quietly back beneath the waves of congressional indifference. The most recent proposal was apparently in direct response to the district court opinion in this case. See S. 757, 96th Cong., 1st Sess. 125 Cong. Rec. S. 3347 (1979), and H.R. 1595, 96th Cong., 1st Sess. 125 Cong. Rec. 339 (1979). This Court has been made aware of no favorable action on this amendment that perhaps would render the dispute moot.

As suggested above, courts and commentators can be found falling on both sides of this definitional dispute; no attempt will here be made to cast these into respective measures and to determine the "weight" of authority. The sources that, however, helped lead us to our reading of the term in its context will be briefly noted and qualified.

The major corporate law treatises do not offer a united front. Compare 1 H. Oleck, Modern Corporate Law § 3 at 13 (1958) ("'Principal office' means the place stated in the articles or certificate of incorporation as the address of the corporation."), with 8 W. Fletcher, Cyclopedia of the Law of Private Corporations § 4035 at 458 (1966) ("The words 'principal office' have a definite meaning, especially when applied to a corporation, in which case they mean the head office, the place where the principal officers

generally transact business and the place to which reports are made and from which orders emanate."). The above formulations need not be mutually exclusive. A corporation's central headquarters, "from which orders emanate," could well be the office listed in the charter as the formal address of the entity. But it need not be; and as pointed out by the TVA, in common practice it frequently is not the same location. The Delaware corporation law statute for many years required businesses incorporating under its provisions to maintain a "principal office or place of business" within the state.[6] This popular incorporating state was never inundated with actual corporate headquarters because of this statutory requirement. No independent tabulation of now-

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[6]The Delaware statute, following the suggestion of the revised MBCA, see note 4, supra, now speaks of a "registered office."

outdated state corporation laws was attempted by this court, but as computed by the TVA (and undisputed by Alabama), 27 states' statutes in that period required the listing of a "principal office" in corporate charters. Neither legislators nor certainly corporate officers considered the statute further to require the location of any particular corporate activity, administrative or otherwise, at that address.

In the pursuit of some insight into understandings of the elusive term "principal office," a survey of case law prior to and contemporary with the passage of the TVA Act produces mixed results. Much of the case law on the meaning of "principal office" is concerned with distinguishing it in the particular context from the "principal place of business" of the subject corporation. That exercise is not particularly helpful here, as the district court order does not require, nor

does Alabama seek, the shifting of the majority of the dam construction, flood control, and electrical generating activities of the TVA to the "immediate vicinity of Muscle Shoals"; rather, the relocation of the administrative headquarters, which can be and often is distinct from the corporation's principal place of business, has been ordered.

When a word has a judicially settled meaning, it is presumed that Congress, by using that word in a statute, used it in that accepted sense. United States v. Merriam, 263 U.S. 179, 187, 44 S. Ct. 69, 71, 68 L. Ed. 240 (1923). The meanings here urged by the respective parties are not, however, judicially settled. In Caceres v. United States Shipping Board Emergency Fleet Corp., 299 F. 968, 970 (E.D.N.Y. 1924), the court distinguished "principal office" and "principal place of business" with the definition now

immortalized in Fletcher's: "The words 'principal office' have a definite meaning, especially when applied to a corporation, in which case they mean the head office, the place where the principal officers generally transact business, and the place to which reports are made and from which orders emanate." Unsurprisingly, Alabama fastens on this and similar formulations as the correct judicial settlement of meaning. Dicta in a bankruptcy case decided by this court, however, offer support to TVA's position. In Dryden v. Ranger Refining & Pipe Line Co., 280 F. 257 (5th Cir. 1922), the court had to determine the "principal place of business" of the bankrupt for jurisdictional purposes. Most of the corporate activity was centered in and around Ranger, Texas. The "general offices" of the company (described in the opinion as the administrative headquarters of the corporation) were in

Kansas City, Missouri. Ranger Refining was a Delaware corporation with its "principal office in Wilmington, Delaware." Id. at 257-58. The case was found properly to belong in the Northern District of Texas, which included the town of Ranger, and not in the locations of either the general offices or the "principal office."

The central question in statutory interpretation is, of course, what meaning Congress intended the term to bear when it passed the TVA Act. Neither party nor this court has uncovered any legislative history specifically on section 831g(a). This controversy that occupies us over forty years later merited no particular attention at the time of the Act's passage.

A consideration of the Act as a whole, however, supports our conclusion that the TVA is in full compliance with the statute by maintenance of an office

in Muscle Shoals for receipt of service of process.[7]

The TVA Act functions as the corporate charter of the Authority. 2A C. Sands, Sutherland Statutory Construction § 49.03 at 233 (4th ed. 1973), indicates that the practical interpretation of a statute must be weighed in determining legislative intent. There is no reason to suppose that Congress intended so to confine the workings of the TVA.[8] The House committee that studied the

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[7]Other TVA business is conducted at Muscle Shoals, including that of the administrative offices and staffs of the divisions of agricultural development, chemical development, and chemical operations. Over 2,000 employees function there. But TVA does not argue that this activity satisfies Alabama's and the district court's reading of the statute; the activities at Muscle Shoals beyond the maintenance of the "principal office" are not required by statute to be in any particular location.

[8]Such confinement may well have been the intention of such Alabama representatives as Senators Lister and Hugo Black, as suggested in their subsequent statements; but the intentions, expressed or hidden, of any single representative do not create congressional intent.

TVA proposal reported: "We have sought to set up a legislative framework, but not to encase it in a legislative straight-jacket. We intend that the corporation shall have much of the essential freedom and elasticity of a private business corporation." H.R. No. 130, 73d Cong., 1st Sess. 19 (1933). The general thrust of the Act argues against a localization of its activities. The work of the TVA was expected to be broad and far ranging. The orientation was regional, even national, in scope, not limited to a single state or location. The argument of Alabama that use in the TVA Act of language identical to that of the principal office provisions of two earlier, presidentially vetoed Muscle Shoals corporation acts is unpersuasive. The expected work of the TVA was to range far beyond the existing operations at Muscle Shoals. As President Franklin Roosevelt stated in his message to Congress

proposing passage of a Tennessee Valley Authority Act:

> It is clear that the Muscle Shoals development is but a small part of the potential public usefulness of the entire Tennessee River. Such use, if envisioned in its entirety, transcends mere power development: it enters the wide fields of flood control, soil erosion, afforestation, elimination from agricultural use of marginal lands, and distribution and diversification of industry. In short, this power development of war days leads logically to national planning for a complete watershed involving many states and the future lives and welfare of millions. It touches and gives life to all forms of human concerns.

I, therefore, suggest to the Congress legislation to create a Tennessee Valley Authority—a corporation clothed with the power of government but possessed with the flexibility and initiative of a private enterprise. It should be charged with the broadest duty of planning for the proper use, conservation, and development of the natural resources of the Tennessee River drainage basin and its adjoining territory for the general social and economic welfare of the Nation.[9]

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[9]The President's interpretation of the principal office provision coincided with that of the TVA—an unsurprising development since, as even the Tennessee Valley Authority admits, it was drafted by the TVA. President Roosevelt responded to Sen. Black's immediate complaints that the TVA was not complying with the principal office provision by letter of September 6, 1934, that read in pertinent part: "It therefore seems to me to be clear that the Congress meant by the provision as to the location of the principal office of the Authority only to fix a legal domicile—not to restrict or localize its business operations in any way."

H.R. Doc. No. 15, 73d Cong., 1st Sess. (1933).

In finding that the general thrust and outlook of the TVA Act militates against a reading that the principal office provision ordained anything more exacting than the maintenance of what, in more current terms, we refer to as a "registered office," this court must respond to a textual argument raised by Alabama that enjoys some surface appeal. Section 2(e) of the Act, 16 U.S.C. § 831a(e), provides in part: "Each member of the Board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States." This salary supplement, Alabama argues, is senseless unless the members of the Board, and thus the administrative apparatus of

the Authority, were to be living and working at the "principal office in Muscle Shoals." While Muscle Shoals is undoubtedly a lovely area, nothing in the record indicates that it is particularly suitable for vacation homes.

The free-residence provision is couched in permissive terms; the initial House version of the Act (sponsored by Lister Hill of Alabama) read: "All members of the Board shall reside in the vicinity of Muscle Shoals." The adoption by the full Congress of the permissive language in the Senate version was seen by the Joint Congressional Committee on the Investigation of the Tennessee Valley Authority in this manner: "Thus Congress provided for the possibility that the Authority might locate its administrative headquarters at Muscle Shoals, but

refrained from requiring that it do so."[10] S. Doc. No. 56, 75th Cong., 3d Sess. 22 (1939). At the passage of the Act, the only readily identifiable property to be immediately transferred to TVA control was at Muscle Shoals. Congress undoubtedly contemplated significant activity there, perhaps even assumed the location of headquarters there. But as this court has written, "[a]n assumption is not a law." Rogers v. Frito Lay, Inc., 611 F. 2d 1074, 1082 (5th Cir. 1980). This provision is not a sufficient indication that Congress, by fixing the location of the TVA's principal office and allowing the directors free housing there, required the

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[10] It can be argued, however, that all that was permissively granted was the right to live in a government residence as opposed to some other residence accessible to the principal office in Muscle Shoals; that is, while directors could live where they wished, their working location remained at the principal office (in the immediate vicinity of Muscle Shoals).

establishment of the corporate headquarters at that same location.

While there exists a paucity of congressional discussion of this provision at the time of the Act's passage, arguments to this court of both parties are replete with after-the-fact commentary by congressmen and committee. The majority report of the above-mentioned joint congressional committee found in answer to the specific question of TVA's alleged noncompliance with section 831g(a) that "[t]he committee finds that the Authority has legally complied with that part of subsection (a) of section 8 of the act, as amended, which requires that the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Ala." S. Doc. No. 56, 75th Cong., 3d Sess. 9 (1939). In arriving at this conclusion, the committee majority reported: "The term 'principal office' has a definite

legal meaning, as a fixed location where the corporation may always be served with legal papers. It is not synonymous with operating or administrative headquarters, which are often located in an entirely different jurisdiction." S. Doc. No. 56, 75th Cong., 3d Sess. 21 (1939). The majority report recommended "that Congress give immediate consideration to clarifying the question about which substantial difference of opinion has existed." S. Doc. No. 56, 75th Cong., 3d Sess. 22 (1939). This invitation to full congressional attention has been met only by silence.

For its part, Alabama advances the vigorously dissenting minority report of the joint committee, the testimony before that committee of Alabama Senators Bankhead and Hill and Representative Sparkman, and the immediate objections voiced by Senator Black in letters to Chairman Morgan of the TVA and President Roosevelt. The gist of

these statements was that the maintenance of the actual administrative headquarters of the TVA in Knoxville rather than Muscle Shoals was "a plain, palpable and open violation of the statute."[11] Neither party's arguments from subsequent statements are particularly helpful in divining the congressional intent. This court disposed of similar arguments in Rogers v. Frito Lay, Inc., supra, with this observation:

> The retroactive wisdom provided by the subsequent speech of a member of Congress stating that yesterday we meant something that we did not say is an ephemeral guide to history.... What happened after a statute was enacted may be history and it may come from members of the Congress, but it is not part of the

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[11] Letter of Senator Black to A.E. Morgan, July 11, 1934.

legislative history of the original enactment.

611 F. 2d at 1080. With particular relevance to the 1939 report of the joint congressional committee, the Rogers court wrote:

> Had this statement [of a subsequent committee] been made in the report of the committee that recommended the legislation, it would indeed be part of the statutory history. When uttered five years later [in this case, six years], it is mere commentary. Moreover, a committee is not Congress. It cannot create a congressional intent that did not exist, or amend a statute by a report.

Id. at 1082.

The Supreme Court, however, reminds us that such subsequent expressions are not without their usefulness. "And while

the views of subsequent Congresses cannot override the unmistakable intent of the enacting one, ... such views are entitled to significant weight ... and particularly so when the precise intent of the enacting Congress is obscure." Seatrain Shipbuilding Corp. v. Shell Oil Co., 444 U.S. 572, 596, 100 S. Ct. 800, 814, 63 L. Ed. 2d 36 (1980). The "precise intent of the enacting Congress" is here certainly "obscure," but it is doubtful that the statements offered here can be said to approach anything so grand as the view of a subsequent Congress. Strong statements fully supportive of their respective positions are offered by each party. But the only thing approaching a "view of Congress" is its silence in the face of this controversy. The chief force of these subsequent declarations, then, lies in their indication of congressional awareness, at a very early date, of the TVA's

alleged noncompliance with the statutory provision. The silence of Congress did not result from ignorance of the dispute. Congress was directed to the problem; simply no action was taken.[12] Congressional inaction is, of course, a jumbled text from which to extract much meaning. But continued congressional funding of allegedly improper agency action can be viewed in appropriate circumstances as a ratification of that agency practice. Young v. TVA, 606 F. 2d 143, 147 (6th Cir. 1979); Swan Lake Hunting Club v. United States, 381 F. 2d

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[12]Alabama attempts to draw significance from the failure of passage of two bills introduced by Tennessee representatives to amend § 831g(a) by substituting Knoxville for Muscle Shoals as the location of TVA's principal office. The Supreme Court has remarked that "unsuccessful attempts at legislation are not the best of guides to legislative intent." Red Lion Broadcasting Co. v. FCC, 395 U.S. 867, 381 n. 11, 89 S. Ct. 1794, 1802 n. 11, 23 L. Ed. 2d 371 (1969).

238, 241 n. 3 (5th Cir. 1967).[13] Aware of the challenge to TVA's construction of the principal office provision, Congress continues, as it has since 1934, to appropriate funds for the maintenance of the central headquarters in Knoxville, not Muscle Shoals. During a period in which the TVA directors, in the exercise of their business judgment, felt that efficiency (and not the terms of section 831g(a)) dictated a removal of the administrative headquarters to Muscle Shoals, congressional riders restricted the use of appropriated funds in aid of that move. And while the Act has been amended several

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[13] TVA v. Hill, 437 U.S. 153, 98 S. Ct. 2279, 57 L. Ed. 2d 117 (1978), suggests a wary application of such principles of implied statutory alteration. This situation is not that of Hill; there are here no competing statutory policies, no confusion about purposes or goals. The argument is not one of repeal by implication, the disfavor of which Hill ably expresses. See Young v. TVA, 606 F. 2d at 148.

times over the ensuing years,[14] Congress has expressed no dissatisfaction with the Authority's construction of the principal office provision.

> To be sure, it may not always be realistic to infer approval of a judicial or administrative interpretation from congressional silence alone. [citations omitted] But once an agency's statutory construction has been "fully brought to the attention of the public and the Congress," and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.

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[14]Including an amendment in 1935 making explicit the intention that the Act "be liberally construed to carry out the purposes of Congress." 16 U.S.C. § 831dd(b).

United States v. Rutherford, 442 U.S. 544, 99 S. Ct. 2470, 2476 n. 10, 61 L. Ed. 2d 68 (1979).

A lengthy consideration of the ambiguous meaning of the statutory term, general principals of corporate practice, the broad and flexible powers and purposes conferred by the statute, and the echoing silence of Congress in the face of the controversy leads this court to conclude that the district court's judgment must be reversed and this case remanded for further proceedings consistent with this opinion.

REVERSED AND REMANDED.

APPENDIX D

UNITED STATES COURT OF APPEALS

For The Fifth Circuit

No. 79-1283

D. C. Docket No. CA 77-M0377NW

STATE OF ALABAMA, Ex Rel. CHARLES A. GRADDICK, As Attorney General of the State of Alabama,

Plaintiff-Appellee,

versus

TENNESSEE VALLEY AUTHORITY, ET AL.,

Defendants-Appellants.

Appeal from the United States District Court for the

Northern District of Alabama

Before GEE, FAY and RANDALL, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Alabama, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court;

IT IS FURTHER ORDERED that the plaintiff-appellee pay to the defendants-appellants the costs on appeal, to be taxed by the Clerk of this Court.

February 13, 1981

ISSUED AS MANDATE: APR 27 1981

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 79-1283

STATE OF ALABAMA, Ex Rel.,
CHARLES A. GRADDICK, As Attorney
General of the State of Alabama,

Plaintiff-Appellee,

versus

TENNESSEE VALLEY AUTHORITY, ET AL.,

Defendants-Appellants.

Appeal from the United States
District Court for the

Northern District of Alabama

ON PETITION FOR REHEARING

(April 2, 1981)

Before GEE, FAY and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ Thomas Gibbs, Jr.
United States Circuit Judge

80-2197

Office-Supreme Court, U.S.
FILED
JUN 29 1981
ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

STATE OF ALABAMA, Ex Rel. Charles A. Graddick, as Attorney General of the State of Alabama,

Petitioner

v.

TENNESSEE VALLEY AUTHORITY, et al.,

Respondents

APPENDIX

(Volume II)

TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CHARLES A. GRADDICK
ATTORNEY GENERAL OF
THE STATE OF ALABAMA

EDWARD E. CARNES
ASSISTANT ATTORNEY
GENERAL OF THE STATE
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ADDENDUM

I. Meaning of the Terms "Muscle Shoals" and "Muscle Shoals, Alabama"

The terms "Muscle Shoals" and "Muscle Shoals, Alabama", as used in the TVA Act and throughout its legislative history, do not refer to a city, town, or settlement. Instead, those terms describe a length of the Tennessee River in north Alabama, an area surrounding it, and the government project located there. Muscle Shoals has been described as "the 37-mile stretch of the Tennessee River between the head of Browns Island and the site of the present Florence Bridge,"[1] and "a stretch in the Tennessee River extending about 35 miles upstream from

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[1] Hearings on H.R. 16396 and H.R. 16614 Before the House Comm. on Military Affairs, 69th Cong., 2nd Sess., pt. 3 (1928), reproduced at 75 Cong. Rec. 9587 (1932).

the town of Sheffield, Ala." 69 Cong. Rec. 10775 (1928). As Representative Jones from Alabama explained:

> Muscle Shoals formerly was a shoal before the dam was constructed, and that referred to the entire area: Florence, Sheffield, and Tuscumbia. Within a short time after Muscle Shoals dam was built, the Wilson Dam was built, Muscle Shoals was set up.
>
> As I recall, it now has a population between 2,200 and 3,000; but when we use the term "Muscle Shoals," we mean the area, this entire area.[2]

After 1916 when the government dams and nitrate project were built in the Muscle Shoals area, the term "Muscle Shoals" was also used to refer to the government project and investment there. For this reason, the legislative history

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[2]Hearings on the (First) Independent Offices Appropriation Bill for 1954 (H.R. 4663) Before the Independent Offices Subcomm. of the House Comm. on Appropriations, 83d Cong., 1st Sess. [hereafter cited as House Hearings on the First 1954 Appropriations Bill] at 1319 (1953).

of what became the Tennessee Valley Authority is, until after the enactment of the TVA Act of 1933, indexed in the Congressional Record under the term "Muscle Shoals, Ala."

The term "Muscle Shoals, Ala." does not usually mean the then-tiny unincorporated town of Muscle Shoals in the middle of the Muscle Shoals area and near the government development. The principal office mandate of Section 8(a) of the TVA Act, 16 U.S.C. §831g(a), does not involve the location of any facility in the town named Muscle Shoals. Instead, the statutory mandate concerns the location of facilities in the geographical area and on the government project from which TVA originated and which are its historical center.

II. Pre-Enactment History: Muscle Shoals is the Historical Center of TVA and the Reason for its Existence

A. The Origins of the Federal Government's Involvement at Muscle Shoals

The federal government's involvement in Muscle Shoals began a century and a half ago in 1824. That was the year that the breadth of federal control over navigation was established in the landmark case of Gibbons v. Ogden, 9 Wheat 1. That same year Secretary of War John C. Calhoun recommended a survey of the Muscle Shoals area of the Tennessee River as one of the most important projects for improvement of navigation and transportation in the country. The Secretary's recommendation was included in President James Monroe's annual

message to Congress on December 7, 1824.[3]

The ensuing survey resulted in a recommendation in 1828 that a lateral canal be built around a section of the shoals. The construction was begun in 1831 by the State of Alabama using the proceeds from land donated by the United States. Before construction was completed, it was determined that much more would be needed to make the Muscle Shoals section of the river navigable. Congress refused to appropriate the requisite funds for more canals and the completed original canal fell into ruin. Four decades later, in 1872, federal engineers proposed repair and enlargement

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[3]American State Papers: 2 Military Affairs at 698-701 (1834), cited at Report of the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong. 3rd Sess., vol. 1, at 11 (1939).

of the old canal. The project was undertaken and was finally completed in 1890 at a cost of $3 million. However, the project was not successful; commercial navigation at low water was still not practicable. In 1891 a proposal for further canal work was submitted to Congress but never acted upon.[4]

Thus, when the nineteenth century ended, John C. Calhoun's dream of a navigable Muscle Shoals had not been realized. However, the federal government had begun what was to become a massive effort involving hundreds of millions of dollars to turn the Muscle Shoals area into a national asset. That effort was ultimately to culminate in the Tennessee Valley Authority Act of 1933.

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[4]75 Cong. Rec. 9587 (1932) (reprinting a 1931 report of a governmental commission).

The early focus on north Alabama and the Muscle Shoals area was to become even sharper before the new corporation was created and required to locate its principal office in that area.

The federal government's Muscle Shoals efforts during the nineteenth century centered around the theme of navigation, but during the early part of the twentieth century another theme emerged to coexist with the earlier one. The new theme was electrical power generation. Between Chattanooga, Tennessee and Paducah, Kentucky, where the Tennessee joins the Ohio, it fell in its natural state (as measured from sea level) about 340 feet. Nearly one-third of this fall was at the Muscle Shoals.[5] The

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[5]75 Cong. Rec. 9587 (1932) (reprinting a 1931 report of a governmental commission).

fall of the water aggravated the navigation problem and helped to give the stretch of the Tennessee River the name Muscle Shoals, which is said to have been derived from the muscular effort required to push water craft upstream in the early days.[6] The fall of the water also raised the potential for production of significant amounts of electric power, a potential which was noticed very early.

The improvement of navigation and the production of power were not mutually exclusive goals. In 1899, Congress enacted a statute giving an Alabama corporation permission to construct canals and a power station "at or near the Muscle Shoals in Tennessee River", provided it did not interfere with navigation. 30 Stat. 1351 (1899). The

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[6] Id.

project was never undertaken.[7] There followed several unsuccessful proposals for a joint private-government investment in navigation and power projects at Muscle Shoals.

B. The National Defense Act of 1916

When the United States entered World War I it needed new domestic sources of nitrates, an essential element in munitions and a useful element in the manufacture of fertilizer. Toward meeting this end Section 124 of the National Defense Act of 1916 was enacted. It authorized the President to construct nitrate plants and electrical power plants and dams upon any river or public

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[7] Report of the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong. 3rd Sess. [hereafter cited as Joint Committee Report] at 11 (1939).

land. President Wilson selected the Muscle Shoals area as the site for this development. H.R. Rep. No. 48, 73rd Cong., 1st Sess. 2 (1933). Muscle Shoals was selected because the process then used for producing nitrates required a large amount of electrical power. S. Rep. No. 19, 70th Cong., 1st Sess. 5 (1929).

The government project at Muscle Shoals constructed pursuant to the National Defense Act was located on 4,000 acres of land and consisted chiefly of Nitrate Plant No. 1 and Nitrate Plant No. 2 and the Wilson Dam. Nitrate Plant No. 1 was located at Sheffield, Alabama. Nitrate Plant No. 2, which was larger, was located at the town of Muscle Shoals, Alabama, about four miles upstream from the other plant and just across the Tennessee River from Florence, Alabama. Electricity-producing steam plants and

a limestone quarry were also part of the project.[8] A decade and a half after the National Defense Act of 1916 was enacted, the federal government had invested approximately $150 million in its projects at Muscle Shoals. 77 Cong. Rec. 2201, 2269, 2344, 2638 (1933).

C. The Pre-1928 Efforts to Utilize the Muscle Shoals Properties

After World War I, the question of what to do about the Muscle Shoals section of the Tennessee River was supplanted by the question of what to do with the government investment there. The great issue of the day was private enterprise versus government utilization,

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[8] Majority Report of the President's Muscle Shoals Inquiry of 1925, reprinted in H.R. Rep. No. 1095, 70th Cong. 1st Sess. 6 (1928); 75 Cong. Rec. 9588 (1932) (reprinting a 1931 report of a governmental commission).

and the prevailing political climate initially favored private enterprise. Literally dozens of bills were introduced in Congress, the vast majority of which provided for a lease or sale of the project to private enterprise.[9] None realized its goal. Bills providing various plans of government operation or mixed government-private operation of the Muscle Shoals properties were considered and rejected. Thousands of pages of hearings were devoted to the subject, and while it was being debated the political climate shifted in favor of the Progressives. This shift produced the Muscle Sholas legislation of 1928 and 1931, which were the forerunners of the TVA Act of 1933.

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[9]The most famous, or infamous, prospective lessees were Henry Ford and the American Cyanamid Company. H.R. Rep. No. 48, 73rd Cong., 1st Sess., at 3 (1933).

The government project at Muscle Shoals became the heart of the TVA as it was originally envisioned, and the question of what to do with the multi-million dollar investment in Muscle Shoals led to enactment of the TVA Act of 1933. TVA did not spring full-grown from the breast of New Deal Progressivism. Instead, it was the Progressive answer to the long-standing, much debated question of what to do with the federal government's $150 million investment in the Muscle Shoals area of north Alabama. As a Senate report said in 1929:

> Muscle Shoals is an old friend. After more than 10 years of investigation, discussion, and consideration it is still with us. Up and down the ragged road of legislative consideration we have traveled through many weary and discouraging epochs of parliamentary mysteries and doubts. Senators have been born into and have died out of its various controversies, and, like Jarndyce v.

Jarndyce, it is still with us.[10]

D. The Muscle Shoals Legislation of 1928 and 1931

The disputed principal office language was not written anew for the TVA Act of 1933. Instead, it was lifted verbatim from two previous pieces of legislation which had been passed by Congress and vetoed by hostile Presidents. This original legislation from which the principal office language draws its meaning is the Muscle Shoals Act of 1928 and 1931.

The Muscle Shoals Act of 1928 would have established the Muscle Shoals Corporation of the United States to operate the government property in the Muscle Shoals area, primarily for the

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[10] S. Rep. No. 19, 70th Cong., 1st Sess., at 1 (1929).

production of fertilizer.[11] Muscle Shoals was the center of the activities which the corporation was to supervise, and §7(a) provided:

> (a) The corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to venue of civil suits. (Emphasis added)

The principal office language is identical to what was to become §8(a) of the TVA Act of 1933, 16 U.S.C. §831g(a).

The Muscle Shoals Act of 1928, and the principal office provision it contained, originated as an amendment in the nature of a substitute in the House Committee on Military Affairs. H.R. Rep. No. 1095, 70th Cong., 1st Sess. Lister

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[11]The Muscle Shoals Act of 1928 is reprinted in full in H.R. Rep. No. 1095, 70th Cong., 1st Sess.

Hill of Alabama was a member of that committee at the time the legislation was written by it. He testified very unequivocally before the Joint Congressional Committee to Investigate the TVA in 1938 about the Military Affairs Committee's intent behind the principal office provision:

> The idea and the purpose of the committee in putting that language in the bill was that the actual headquarters, that those whose business it was to carry on the permanent work, to set the policies, to be the chiefs and the head, should have their office at Muscle Shoals, Ala.
>
> And in that connection, let me say that back in 1928 the Committee on Military Affairs of the House had a full picture of the situation, in many ways, just about as full as we have today, for this reason; that the engineers, the Army Engineers, at that time had completed the finest and most detailed survey of the Tennessee River that has ever been made of any river in the whole world, and we had that survey of the engineers before

> us at the time we put this language in the bill.
>
> We knew what we were doing; we knew what we wanted to do. We had the facts that Senator Bankhead has given us this morning about the geographical importance; the fact that after all is said and done, Muscle Shoals is, so to speak, the center of gravity of any activity in that whole great valley.
>
> All of the facts showed that Muscle Shoals was a logical place, that it was a feasible place, and that economy and efficiency dictated that the headquarters be placed there.
>
> I was a member of the Committee on Military Affairs when that language was written into the bill. . .[12]

The Muscle Shoals Act of 1928 was pocket-vetoed by President Coolidge. 79 Cong. Rec. 2926 (1929).

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[12]Hearings Before the Joint Committee on the Investigation of the Tennessee Valley Authority, 75th Cong., 3rd Sess. [hereafter Joint Committee Hearings] at 5224 (1938) (Emphasis added)

Following President Coolidge's veto of the Muscle Shoals Act of 1928, Senator Norris introduced S. J. Res. 49 of the 71st Congress on May 28, 1929. 69 Cong. Rec. 2148. Except for the addition of a section giving Alabama and Tennessee a small percentage of the power revenues collected, Senator Norris' S. J. Res. 49 was the same as the previously vetoed legislation, and the principal office provisions were identical. S. Rep. No. 19 at 15.

In the process of becoming the Muscle Shoals Act of 1931, S. J. Res. 49 was reported out of committee accompanied by S. Rep. No. 19. A passage of the committee report which provides valuable perspective for the principal office provision is as follows:

> When the Government commenced the construction of these great plants it was necessary to build homes for the workers, and the Government

> bought sufficient land and built a town at nitrate plant No. 1, and another town at nitrate plant No. 2. At nitrate plant No. 1 we have over one hundred permanent houses, and nearly two hundred permanent residences at plant No. 2. Permanent residences were also constructed at Waco quarry. The houses at the nitrate plants were fully equipped with every modern convenience. A large number of other houses were also built for temporary purposes. Over 30 miles of macadamized roads were constructed on this property. A large furnished hotel was constructed by the Government at nitrate plant No. 2. At these two Government-owned towns there are 4,200 acres of land, a great portion of which is still vacant and ready for additional improvement.
>
> The question now is, and for 10 years has been, what shall the Government do with this great investment?. . .[13]

The government corporation which this legislation would have created had it not

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[13] S. Rep. No. 19 at 7. (Emphasis added).

been vetoed was to be named the "Muscle Shoals Corporation of the United States". While the committee report describes abundant government housing, facilities, and land available in the Muscle Shoals area for the proposed corporation, the report does not mention any similar facility available in Knoxville or elsewhere. Indeed the very title of the Senate report, submitted by Senator Norris, is "Disposition of Muscle Shoals".

S. J. Res. 49 passed the Senate with only minor amendments. 72 Cong. Rec. 6511 (1930). After the House passed a different bill, a conference committee reported out a compromise bill. H.R. Rep. No. 2747, 71st Cong., 3rd Sess. (1931). In the compromise bill, §7(a), the principal office provision, was left intact. No changes relevant to the

meaning of that provision were made in any other part of the bill. The compromise measure was approved by both Houses of Congress, but it was vetoed by President Hoover who protested government competition with private business. 74 Cong. Rec. 7046 (1931).

III. The Tennessee Valley Authority Act of 1933

Legislation dealing with the Muscle Shoals properties finally became law during the 73d Congress, 1st Session as Public Law No. 17, 48 Stat. 58, the "Tennessee Valley Authority Act of 1933." That statute, as subsequently amended, is the present law on the subject. 16 U.S.C. §831. None of the subsequent amendments have changed the language or effect of the principal office provision, §8(a) of the 1933 Act, 16 U.S.C. §831g(a).

A. Section 8(a)

The TVA Act of 1933 is the product of two bills in the 73d Congress, 1st Session --S. 1272 introduced by Senator Norris and H.R. 5081 introduced by Representative Lister Hill of Alabama.[77] Cong. Rec. 2055. The principal office provisions of each of these two bills were identical to the principal office provision in the Muscle Shoals Act of 1928 and the Muscle Shoals Act of 1931, discussed on pp. 95a-102a of this addendum, above. That provision, which originated in those earlier acts and which was continued in both the Norris and Hill bills, was enacted into law unchanged as Section 8(a) of the final act.

B. Section 2(e)

Section 2(e) of Representative Hill's H.R. 5081 provided:

> Each of the members of the board shall be a citizen of the United States and shall receive compensation without regard to the provisions of other laws applicable to the officers and employees of the United States, at the rate of $10,000 a year, to be paid by the Authority as current expenses. Members of the board shall be reimbursed by the Authority for actual expenses (including traveling and subsistence expenses) incurred by them while traveling in the performance of the duties vested in the board by this Act. All members of the board shall reside in the vicinity of Muscle Shoals, Alabama, and shall devote their entire time to the work of the authority.[14]

The relevant paragraph of section 2(e) of Senator Norris' S. 1272 provided:

> Each of the members of the board shall be a citizen of the United States. The chairman of the board shall receive a salary of $10,000 a year. Other members of the board shall receive salaries of $9,000 each per annum. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of

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[14] 77 Cong. Rec. 3563 (Emphasis added).

> the dwelling houses now owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses while in the performance of the duties vested in the board by this act. No member of said board shall, during his continuance in office, be engaged in any other business, but shall give his substantial time to the business of said Corporation.[15]

During debate over S. 1272 in the Senate, Senator Logan of Kentucky questioned Senator Norris about the adequacy of the salary provided in his bill to attract High-calibre men to the full-time job of Director. Senator Norris replied:

> Mr. President, I realize that there is very much disagreement as to whether we could get a man for $9,000 or $10,000 who could fill this place. I am of the opinion that we could. I do not believe there would be any difficulty. If a

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[15] 77 Cong. Rec. 3563 (Emphasis added).

member of the board desires to live in Muscle Shoals -- and I think it is a beautiful place to live -- he would have his house rent free, in addition to his salary.[16]

After the House passed H.R. 5081, the Senate substituted S. 1272 for it. 77 Cong. Rec. 277 -2809 (1933). The differences between the two bills were ironed out in a conference committee which included Senator Norris, 77 Cong. Rec. 3125, and Representative Lister Hill. 77 Cong. Rec. 3125, and Representative Lister Hill. 77 Cong. Rec. 3084 - 3085. The final version of §2(e), incorporating the Senate version's free residence at Muscle Shoals for its directors, is presently codified as 16 U.S.C. §831a(e). It provides:

> Each of the members of the board shall be a citizen of the

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[16] 77Cong. Rec. 2687 (1933) (Emphasis added).

United States, and shall receive a salary at the rate of $10,000 a year, to be paid by the Corporation as current expenses. Each member of the board, in addition to his salary, shall be permitted to occupy as his residence one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, Alabama, the same to be designated by the President of the United States. Members of the board shall be reimbursed by the Corporation for actual expenses (including traveling and subsistence expenses) incurred by them in the performance of the duties vested in the board by this act. No member of said board shall, during his continuance in office, be engaged in any other business but each member shall devote himself to the work of the Corporation. (Emphasis added)

During hearings held in 1938 by the Joint Committee to Investigate the TVA, Senator Sparkman explained the evolution of §2(e) of the act. He testified:

> The house bill said, "all members shall reside in the vicinity of Muscle Shoals, Ala." but did not mention free rent. The Senate coupled the residence and free rent. When the

> conference agreement was reached naturally the Senate provision giving free rent as a part of the salary was accepted, the clear intention being that they should live there where the act said their work was to be. In the debate in the Senate after the bill had been adopted in the House Senator Norris was asked to explain any differences between the House bill and the one he was sponsoring. He explained there were only two differences -- transmission of power and manufacture of fertilizer. There was no difference as to the meaning to be gathered from these sections as to where the main offices should be and the directors should reside and work. . . .[17]

The House version of §2(e) would indisputably have located TVA headquarters in the Muscle Shoals area, because it required the directors to reside there. If the final version of the TVA Act, which includes the principal office provision, does not require TVA headquarters or the

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[17] Joint Committee Hearing, supra at 3762 (Emphasis added).

directors' offices to be located near Muscle Shoals, then a substantive change was made in §2(e) by the conference committee. There is no indication whatsoever that the conference committee intended such a change or that anyone in Congress thought that such a change had been made. Various fundamental differences between the House and Senate bills were pointed out and discussed during debate prior to enactment of the final version of the legislation. E.g., 77 Cong. Rec. 2635, 2638 -2639, 2663. No difference concerning the location of corporate headquarters was ever mentioned. The statement of the House managers which accompanied the conference report pointed out more than 20 differences between the House and Senate bills and discussed how they were resolved, 77 Cong. Rec. 3560 - 3561, but not the slightest mention was made of any difference between the two

bills concerning the location of TVA headquarters and the offices of its Board of Directors.

C. Section 9(b)

Both the House and the Senate bill made provision for TVA to be audited by the Comptroller General. Section 10(b) of H.R. 5081 provided:

> The board shall require a careful and scrutinizing audit and accounting by the General Accounting Office or its successor in performing similar duties, during each governmental fiscal year of operation under this act, and said audit shall be open to inspection to the public at all times, and copies thereof shall be filed in the principal office of the Authority at Muscle Shoals, in the State of Alabama. At least once during each fiscal year the President of the United States shall appoint a firm of certified public accountants of his own choice and selection which shall have free and open access to all books, accounts, plants, warehouses, offices, and all other places, and records, belonging to or under the

> control of or used by the Authority in connection with the business authorized by this act. And the expenses of such audit so directed by the President shall be paid by the board and charged as part of the operating expenses of the Authority.[18]

Section 9(b) of S. 1272, provided as follows:

> The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he shall determine but not less frequently than once each fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property, and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in

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[18] 77 Cong. Rec. 3574 (1933) (Emphasis added).

quadruplicate, one copy for the President, one for the chief officer of the Corporation, one for public inspection, and the other to be retained by him for the uses of the Congress. The expenses of each such audit may be paid from moneys advanced therefor by the Corporation, or from any appropriation or appropriations for the General Accounting Office and appropriations so used shall be reimbursed promptly by the Corporation as billed by the Comptroller General. All such audit expenses shall be charged to operating expenses of the Corporation. The Comptroller General shall make special report to the Congress of any transaction or condition found by him to be in conflict with the authority or duties intrusted to the Corporation by law.[19]

Section 9(b) of the bill reported out by the conference committee, combined the House and Senate versions to provide as follows:

> The Comptroller General of the United States shall audit the transactions of the Corporation at such times as he

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[19] 77 Cong. Rec. 3573 (1933) (Emphasis added).

shall determine, but not less frequently than once each governmental fiscal year, with personnel of his selection. In such connection he and his representatives shall have free and open access to all papers, books, records, files, accounts, plants, warehouses, offices, and all other things, property and places belonging to or under the control of or used or employed by the Corporation, and shall be afforded full facilities for counting all cash and verifying transactions with and balances in depositaries. He shall make report of each such audit in quadruplicate, one copy for the President of the United States, one for the chairman of the board, one for public inspection at the principal office of the Corporation, and the other to be retained by him for the uses of the Congress. The expenses of each such audit may be paid from moneys advanced therefor by the Corporation, or from any appropriation or appropriations for the General Accounting Office, and appropriations so used shall be reimbursed promptly by the Corporation as billed by the Comptroller General. All such audit expenses shall be charged to operating expenses of the Corporation. The Comptroller General shall make special

> report to the President of the United States and to the Congress of any transaction or condition found by him to be in conflict with the powers or duties intrusted to the Corporation by law.[20]

That provision was enacted as Section 9(b) of the TVA Act of 1933, and as amended is contained in 16 U.S.C. §831h(b). None of the subsequent amendments removed the relevant language requiring that a copy of the report be maintained for public inspection at the principal office.[21]

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[20] 77 Cong. Rec. 3573 - 3574 (1933) (Emphasis added).

[21] TVA maintained in the district court that section 9(b), 16 U.S.C. §831h(b) had been superceded by section 105 of the Government Corporation Control Act, as amended, 31 U.S.C. §850. The legislation TVA refers to was not enacted until twelve years after the TVA Act of 1933, and could have no effect on the pre-enactment legislative intent behind Section 8(a) as it was reflected in Section 9(b).

IV. The Early Period - 1933 to 1938

A. The Board Resolutions

The TVA Act became law on May 18, 1933. The first meeting of the Board of Directors was held on June 16, 1933. The minutes of that meeting reflect that:

> The Board adopted a motion that offices of the Authority should be established at Knoxville, Tennessee, in addition to the office required by law to be located at or in the vicinity of Muscle Shoals, Alabama. The Board determined that in view of the construction activity at Cove Creek Dam, and in view of the location in Knoxville of the law library of the University of Tennessee, the principal office of the legal department should be located at Knoxville.[22] (Emphasis added)

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[22] A copy of the minutes of that meeting was attached as an appendix to Alabama's December 9, 1977 brief in the district court, and was transmitted to the appellate court on March 13, 1979, with the record on appeal. See, R. 319. [References to "R" are to the record on appeal.]

At a meeting held on July 30, 1933, the Board of Directors adopted the following resolution:

> WHEREAS, Section 8 (a) of the Act creating the Tennessee Valley Authority provides that the principal office of the Authority shall be maintained in the immediate vicinity of Muscle Shoals, Alabama;
>
> NOW, THEREFORE, BE IT RESOLVED, That the principal office be established and is hereby established on the Government property at Muscle Shoals. It is further ordered that for purposes of effectively prosecuting the work of the Authority, auxiliary offices be maintained at Chattanooga, Knoxville, and Washington, District of Columbia. (R. 12-13)

B. The G.A.O. Recognizes TVA's Violation of Section 8(a)

In the first official General Accounting Office audit of TVA, covering the period from June 10, 1933 to June 30, 1934, an exception was taken to the rent TVA paid for certain office space in

Knoxville. The reason an exception was taken was the Comptroller General's opinion that "[t]he law specifically requires that the headquarters of the corporation be established in the vicinity of Muscle Shoals, Alabama."[23] The G.A.O.'s 1934 audit report contains the following relevant paragraph:

> The law specifically requires that the headquarters of the Corporation be established in the vicinity of Muscle Shoals, Ala., where the already completed Wilson Dam, generating plant, transmission system, fertilizer, steam and ice plants, also permanent homes, storehouses, shops, railroad facilities, and other government owned property were located and in operation. The Wheeler Dam and Townsite and other contemplated projects are also within comparatively convenient distance (20 miles)

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[23] Joint Committee Hearings, supra at 4480 (Emphasis added).

of the prescribed location for the principal office.[24]

In the court of appeals, TVA asserted that this 1934 audit report was tentative, and implied that it was superceded by the 1935 audit report. The 1935 report, which covered a different period of time, contained the following two paragraphs:

> Section 8(a) of the act specifically provides that "The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama". Despite the provision of law, supra, to which the corporation's attention was invited in a previous report, the matter is again mentioned because of the continued increasing expenditures amounting to

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[24]General Accounting Office 1934 Report of Audit of the Transactions of the Tennessee Valley Authority, at 92-93. A copy of the relevant portion of this audit was attached to Alabama's December 9, 1977 brief in the district court, and was transmitted to the appellate court on March 13, 1979, with the record on appeal. See, R. 319.

> approximately $150,000 during the fiscal year 1935 for rent, maintenance, and reconditioning of buildings in Knoxville, Tenn., where the corporation actually established and still maintains its principal offices. However, the corporation made provision at First Quarters for a board room, and an office for each of the directors, and appointed the manager of the Muscle Shoals Operations as secretary to the Board, thereby complying with the letter requirements of the act.
>
> The reasons advanced for locating the active executive and administrative offices at Knoxville were lack of housing facilities at Muscle Shoals and the desire to be near Norris Dam, which was then under construction.[25]

This report did not replace the 1934 one, nor is this report G.A.O.'s final word on the subject. In 1938, G.A.O.'s Chief of Investigation testified as a representative of the Comptoller General that in his opinion the principal office

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[25]General Accounting Office 1935 Report of Audit of the Transactions of the Tennessee Valley Authority, at 196 (Emphasis added).

provision of section 8(a) meant headquarters.[26]

In any event, even assuming that the 1935 G.A.O. report was the proper approach to the issue, it would not provide refuge for TVA's present situation. As the passage quoted above indicates, G.A.O. interpreted the act to at least require TVA to locate in Muscle Shoals "an office for each of its directors". TVA admits that its directors now have offices in Knoxville, and none in Muscle Shoals. (R. 45-46, 51, 161, 245, 247).[27]

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[26]Joint Committee Hearings, supra at 4405, 4480-4485 (1938).

[27]While TVA does claim that one of the rooms in the National Fertilizer Building on the Muscle Shoals Reservation is a "board meeting room", it has been used only once for a board meeting in the twelve years preceding the filing of this lawsuit. (R. 10-11, 61-62) TVA maintains similar "board meeting rooms" in Chattanooga and Washington, but virtually all of the regular monthly meetings of the board are held in the principal board meeting room in Knoxville. (R.54-55, 61).

C. Senator Hugo Black Protests TVA's Violatin of Section 8(a)

From July of 1934 through March of 1936, Senator Hugo Black and TVA officials exchanged letters on the principal office issue.[28] In Senator Black's first letter, dated July 2, 1934 and addressed to the TVA Board of Directors, he stated:

> For your information, I am enclosing copy of an advertisement appearing in yesterday's Birmingham Age-Herald with reference to the Tennessee Valley Authority. This particular advertisement is complaining because the headquarters of the Tennessee Valley Authority have not been established at Muscle Shoals as the Muscle Shoals bill plainly provides.

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[28]These letters are reprinted in their entirety in Joint Committee Hearings, supra, at 5207-5211.

A copy of an August 13, 1934 letter from Senator Black to President Roosevelt is contained on R. 16-18. President Roosevelt's reply, which is contained on R. 20-21, was drafted in its entirety by TVA. (R. 258)

Already, I have talked with each member of the commission about this subject. Immediately upon receiving information that an office was to be established at Knoxville, I talked with Dr. Arthur E. Morgan personally in the City of Washington.

Dr. A. E. Morgan explained to me then that it was necessary to have an office at Knoxville for the purpose of building Norris Dam. At that time, there had been no provisions for building Wheeler Dam. I agreed with Dr. Morgan that it would be necessary to have some kind of office close to Norris Dam at that time, but I stated that I hoped no definite arrangements would be made for permanent offices in that vicinity, because it was my intention to insist as vigorously as I could that the law be complied with and that the headquarters of the Tennessee Valley Authority be maintained at Muscle Shoals.

As I am largely reponsible for the provision of the bill which requires that the Tennessee Valley Authority maintain its principal office "in the immediate vicinity of Muscle Shoals, Ala.," I think I can safely say that no one has ever anticipated that there was any possibility that headquarters

would be established at Knoxville or at any distance so far away from Muscle Shoals. . . .[29]

Having not received a reply to that first letter, Senator Black wrote another dated July 11, 1934 in which he stated:

> Last week I wrote you about the failure of the Tennessee Valley Authority to abide by the law creating it, and to establish headquarters at Muscle Shoals, Ala. Up to this time I have not received a reply to that communication.
>
> I wish again to call your attention to the fact that the law is positive and definite on this subject. There can be no ambiguity in the law. The law says, and the law was intended to say, that the members of the Tennessee Valley Authority should have no discretion whatever as to the location of the headquarters of this organization. The location of the headquarters is fixed by the law creating the board, and the board has no right to ignore this provision of the

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[29] Joint Committee Hearings, supra at 5207 (Emphasis added).

> law than it has to ignore any other provision of the law. Neither the Tennessee Valley Authority, nor any other official of the United States, has any power on earth to change the effectiveness of this provision.
>
> As I stated to you before, I am sympathetic with the Tennessee Valley Authority. I have tried to work completely in harmony with the members of that Board. I have defended them publicly and privately. Last week I had occasion before a public group to defend the Tennessee Valley Authority.
>
> I cannot, however, defend a plain, palpable and open violation of the statute. It gives the enemies of the Tennessee Valley Authority an argument which is unanswerable. I do not consider it to be a friendly act to the Administration. . . . .[30]

The Chairman of TVA's Board of Directors replied to Senator Black in a letter dated July 14, 1934, which stated:

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[30]Joint Committee Hearings, supra at 5208-5209 (Emphasis added).

. . . . When we selected Knoxville as the point for the location of most of the offices it was obvious to us that the work of these offices could be more efficiently and economically conducted from Knoxville. We are still of that opinion.

We have offices located in Washington, Knoxville, Chattanooga, and Muscle Shoals, with considerable personnel at the latter three points. The situs of our official headquarters is at Muscle Shoals, in conformity with our interpretation of the act and in conformity with the usual procedure among corporations where several field offices are necessary.

As soon as I have an opportunity to discuss the matter with my associates we will reply further to your communication.[31]

Senator Black quickly responded to the Chairman, in a letter dated July 16, 1934, which reads in its entirety:

Today I am in receipt of your letter of July 14. I note that you will have a meeting of

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[31] Joint Committee Hearings, supra at 5209 (Emphasis added).

the entire Muscle Shoals Commission, in connection with the location of the Muscle Shoals headquarters.

I regret very much to read the paragraph of your letter which is as follows: "We have offices located in Washington, Knoxville, Chattanooga, and Muscle Shoals, with considerable personnel at the latter three points. The situs of our official headquarters is at Muscle Shoals, in conformity with our interpretation of the Act and in conformity with the usual procedure among corporations where several field offices are necessary."

I regret exceedingly that this statement was made in your letter. In many public statements, the Knoxville papers have quoted statements of at least one member of the commission to the effect that the headquarters were in Knoxville. Comments have been made upon the amount of money spent at headquarters.

If this matter is to be fought out in the courts, it should be fought out on a fair and just basis. If the commission believes that it has the right, in the face of the statute, to establish headquarters at Knoxville, Tenn., that is one thing. It is quite another thing, however, to make a

statement that there is a technical location of headquarters at Muscle Shoals.

As one who stood for the provision making Muscle Shoals headquarters, I know that no single individual had in mind that Muscle Shoals would be made technical headquarters. It was contemplated that Muscle Shoals should be the actual headquarters of the Tennessee Valley Authority.

This was natural. The people of Alabama have been working for this project for many years. It was due to their tenacity, along with some of the Members of the Senate and House of Representatives, that this question was kept alive.

I desire to repeat that I consider that the establishment of headquarters at Knoxville is in plain, open, and palpable violation of law.

I wish to be in a situation to support the Tennessee Valley Authority 100 percent. I am for the program. I do not consider, however, that there is any defense that can be presented for violation of the mandatory provisions of the act

requiring headquarters to be located in Muscle Shoals.[32]

In a letter dated August 15, 1934, TVA's Chairman responded to Senator Black as follows:

> This is a follow-up of our discussion concerning the location of the principal office of the Tennessee Valley Authority.
>
> The wording of the Tennessee Valley Authority Act is the wording generally used in defining the legal headquarters of a corporation. The principal office of a corporation in both law and practice is the legal domicile of the corporation where summonses and notices may be given. There are hundreds of corporations in America, both private corporations and public corporations like the Tennessee Valley Authority, of which the principal offices are located at one point and the business and working offices at another. For instance, in the State of New York, where the law states that a public corporation shall

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[32] Joint Committee Hearings, supra at 5209 - 5210 (Emphasis added).

have its principal office at Albany, the seal of the corporation and its legal agent will be at Albany, and the working office of the corporation may be in New York City, if that is a more appropriate place to work. The Tennessee Valley Authority has followed the customary and legal procedure in this case.

We have tried to handle our program in the way that would be to the highest benefit to every one involved, and to work for the Tennessee Valley area as a whole and not for any section. To do other than this, in our opinion, would be to fail in our duty.

The facilities of Knoxville for carrying on the administrative work of the district are so superior to those about Muscle Shoals that there seemed to be no question as to where our duty lay in this respect.

In saying that we have endeavored to avoid sectionalism in the work of the Tennessee Valley Authority, I might draw your attention to the fact that while Tennessee covers a larger portion of the valley area than any other State, there are more Tennesssee Valley Authority

> employees in Alabama than in all the other states together. Incidentally, there are about twice as many employees at Muscle Shoals as there are at Knoxville.[33]

Senator Black remained convinced that TVA's course of action was plainly in violation of the mandate of the principal office provision. In the final letter in the exchange, Senator Black on March 2, 1936, wrote the Chairman that:

> In your telegram several days ago you indicated that efforts were being made to locate suitable additional quarters in the Muscle Shoals district. This is, of course, very gratifying to me. It is my own belief that one of the weakest things in connection with the entire Tennessee Valley Authority position today is the fact that headquarters have not been established in the Muscle Shoals district as required by law. Certainly there can be no reason why the headquarters for

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[33] Joint Committee Hearings, supra at 510 - 511 (Emphasis added).

the fertilizer part of the program should be anywhere else except where the fertilizer is being worked upon. It is my understanding that you not only have headquarters of the entire Tennessee Valley Authority at Knoxville, but that the headquarters of the fertilizer division of the program are also at Knoxville. It is also interesting to note that Congressman McReynolds of Chattanooga has protested against any further activities at Knoxville.[34]

D. Remarks Made on the Floor of the House of Representatives During the 79th Congress, 1st Session Recognize TVA's Violation of Section 8(a)

On June 13, 1939, Representative May of Kentucky made some comments on the floor of the House of Representatives concerning where the law required TVA's

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[34] Joint Committee Hearings, supra at 5211 (Emphasis added). Senator Black was appointed to the Supreme Court in August of 1937.

headquarters to be. In commenting, he said:

> We required them to keep their principal office at Muscle Shoals, and provided in the act that the directors should live in a house free of rent at Florence, Ala. yet they went to Knoxville, Tenn., and rented five of the biggest office buildings in Knoxville and have more than 5,000 office employees in the Tennessee Valley riding automobiles at 5 cents a mile and running up expense accounts three times in excess of the railroad fare from Knoxville to Muscle Shoals. That is economy you have.....[35]

When Representative Sparkman of Alabama said he agreed with Representative May that the location of TVA's principal office ought to be in the immediate vicinity of Muscle Shoals, May replied:

> I agree with the gentleman; but he misunderstood my meaning, because I am just using that as an illustration to show their utter disobediance of the

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[35] 84 Cong. Rec. 7117 (Emphasis added).

disobediance of the mandate of Congress. That is why I mentioned it. I do not care where they keep their office, except they ought to be made to obey the law . . . .[36]

V. The Frahn Case: Judge Murphree Expresses his Opinion that TVA's Interpretation of Section 8(a) is Probably Contrary to the Congressional Intent

In 1939, Harry J. Frahn and ten other residents of Colbert County, Alabama filed suit in the Northern District of Alabama against TVA for violating section 8(a). The result of that lawsuit is reported as Frahn v. Tennessee Valley Authority, 41 F. Supp. 83 (N.D. Ala. 1941). Neither the State of Alabama nor any official of it was a party to the lawsuit, and no attorney representing the state appeared at any

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[36] Id. (Emphasis added).

stage of it. Instead, as the Frahn court viewed the proceeding, 41 F. Supp. at 84:

> The plaintiffs bring this action as citizens and taxpayers of the communities near Muscle Shoals for themselves and for other similarly situated and ask that a declaratory judgment be entered against the Tennessee Valley Authority and its directors adjudging and holding that they are not complying with the above provision of said Act, and in effect praying that they be made to comply by order of this court.

In explaining why it dismissed the Colbert County citizens' complaint, the court explained:

> Defendants have filed a motion to dismiss the petition for failure to state a claim, relying upon two grounds: (1) Lack of legal interest in the plaintiffs to demand judicial relief, (2) lack of judicial power to control the discretion of the executive branch of the government within matters of the primary jurisdiction of the latter.
>
> The question is one of wide public interest to people of Northern Alabama. That the Tennessee Valley Authority in

> actuality maintains its principal place of business and its general headquarters in the State of Tennessee is a matter of common knowledge. It is probably true that great public benefit would accrue to the Muscle Shoals communities and the people living there if the officers and offices of the Tennessee Valley Authority had been located according to the letter of the Act. The court feels constrained to say that there may have been an interpretation placed upon the quoted provision of the Tennessee Valley Authority Act which was not intended when the Act was adopted by Congress, and doubtlessly, the selection of the personnel of the Board of the Tennessee Valley Authority very greatly influenced the adopted interpretation. However, for reasons which the court will hereinafter set out, the motion of the defendants to dismiss for failure to state a claim must be granted, for the court is without jurisdiction in this proceeding to determine the issue. Id. (Emphasis added)

The court then went on to cite and discuss standing cases, and it held that the plaintiffs did not have standing to bring the lawsuit. While the court did

discuss the issue of administrative discretion, the only case cited in that discussion was Massachusetts v. Mellon, 262 U.S. 447 (1923), a standing case. The final paragraph of the opinion is, 41 F. Supp. at 86:

> The court is convinced that the motions of the defendants to dismiss the petition must be granted for the failure to present a justiciable controversy upon which a declaratory judgment, of the nature prayed for in the petition, may be entered.

The Section 8(a) issue had never been the basis of a lawsuit brought by a party deemed to have standing, until the district court ruled that the State of Alabama had standing to litigate the issue in this case.

VI. The Joint Committee Proceedings

A. The Resolution

On April 4, 1938, the 75th Congress adopted Public Resolution No. 83 which created a joint congressional committee to investigate TVA. 52 Stat. 154. While one of the issues considered was whether TVA had complied with §8(a) of the act, the committee's investigation was far from a single-minded consideration of the true meaning of §8(a). The resolution directed the joint committee to investigate twenty topics, which included everything from the number, motivation, and effect of public utility suits against TVA to whether any of its directors had been guilty of improper conduct.

B. The Hearings

During the course of hearings conducted on the various topics, TVA officials defended their interpretation of §8(a).[37] No one other than TVA officials testified in support of their interpretation. The only testimony concerning the legislative history of the provision came from Alabama's congressmen, all of whom presented evidence that the legislative intent behind §8(a) had been to mandate the location of TVA headquarters. Senator Bankhead, Representative Sparkman, and Senator Hill testified.[38] Mr. Stuart Tulloss, an attorney and Chief of Investigation of the General Accounting

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[37] E.g., Joint Committee Hearings, supra at 504-505, 834-838, 1224-1225.

[38] Joint Committee Hearings, supra at 3760-3771 (Sparkman), 5203-5222 (Bankhead), and 5222-5227 (Hill).

Office, testified that in that office's opinion §8(a) mandated the location of TVA headquarters in the immediate vicinity of Muscle Shoals, Alabama.[39]

While a Representative, Senator Hill had been a member of the House Committee on Military Affairs which had reported out the principal office provision as part of what became the Muscle Shoals Act of 1928.[40] He testified unequivocably about the reason the provision was made part of that original legislation on the subject.[41] Senator Hill had also co-authored along with Senator Norris, the TVA Act of 1933, and he explained how

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[39] Joint Committee Hearings, supra at 4405, 4480-4485.

[40] Joint Committee Hearings, supra at 5223-5224.

[41] Id. at 5223-5225. Part of Senator Hill's testimony in this regard is set out on pages 107a-108a, of this addendum, above.

and why the principal office provision was made part of it:

> When the present administration came into power, as you recall, in those early days, it was somewhat the custom for bills to be written at the other end of the Avenue and sent up to this end for enactment. The bill, however, creating the Tennessee Valley Authority did not follow that course. The conference was held between the President, Senator Norris, Congressman McSwain, of North Carolina, and myself, and we agreed that Senator Norris and Mr. McSwain and I would write the legislation.
>
> Senator Norris came on back and wrote the bill creating the T.V.A., and Mr. McSwain and I went back to the House side and wrote a somewhat similar bill. Into both of those bills went this provision, this identical language, and whenever the question came up in the committee, Mr. Wolverton no doubt can bear testimony at this time; he was at that time an honored member of that committee; it was--the reasons were given, based on economy, based on feasibility, based on efficiency, and so the bill passed both the House and the Senate, was signed by the

President of the United States, and became the law with this provision in it.[42]

Representative Wolverton, to whom Senator Hill referred was a member of the Joint Committee who joined in the minority report which found that TVA's failure to locate its headquarters in the Muscle Shoals area was a violation of section 8(a).[43]

The explanation which TVA had given for originally locating its headquarters offices in Knoxville was that it was near the first large construction project, Norris Dam.[44] TVA officials did not view that as a permanent headquarters location, and they had indicated to

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[42]Joint Committee Hearings, supra at 5225.

[43]Joint Committee Report, supra at p. III, and at 330-331.

[44]E.g., Joint Committee Hearings, supra at 3763.

Alabamians that it was temporary.[45] During the Joint Committee hearings, TVA officials stress the need for "flexibility to move about during the construction period in the interest of managerial economy at the time," and emphasized that the corporate offices situation might change after the construction period was over.[46] In view of the fact that the location of TVA

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[45] Id., supra at 3770; In 1953, TVA admitted to a Senate subcommittee that, "At the time TVA was established, it was generally assumed that the permanent headquarters would be on the Government reservation at Muscle Shoals." Hearings on the (Second) Independent Offices Appropriation Bill for 1954 (H.R. 5690) Before the Independent Offices Subcomm. of the Senate Comm. on Appropriations, 83d Cong., 1st Sess. [hereafter cited as Senate Hearings on Second 1954 Appropriation Bill], at 90.

[46] Joint Committee Hearings, supra at 836.

headquarters in Knoxville was temporary and was tied to completion of the construction phase, the committee was justified in believing as one member said that as soon as the construction was completed, "the situation may take care of itself at that time."[47] Indeed, in 1939, the same year the Joint Committee report was issued, TVA did in fact decide to move its headquarters to the Muscle Shoals area.[48] The attitude of the majority of the committee toward the problem was reflected in the candid comment of its Vice Chairman that, "there is something in the law that perhaps has been at least technically evaded, which requires the location of the headquarters

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[47] Id., supra at 3770.

[48] House Hearings on First 1954 Appropriations Bill, supra at 1240 (1953).

at Muscle Shoals.[49] Joint Committee Vice Chairman Mead ultimately joined in the majority report.[50]

C. The Reports: A "Substantial Difference of Opinion on the Subject"

The majority finding on the issue, reported on April 1, 1939, was as follows:

> Subsection (j): The committee finds that the Authority has legally complied with that part of subsection (a) of section 8 of the Act, as amended, which requires that the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Ala. However, on account of the substantial difference of opinion on the question, the committee recommends that, in view of the approaching completion of the dams, Congress give immediate

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[49] Joint Committee Hearings, supra at 3081.

[50] Joint Committee Report, supra at p. III.

consideration to clarifying the issue.[51]

Two important paragraphs of the majority report discussing that finding show that the majority was influenced by temporary economic considerations. Those two paragraphs, and the final one, are as follows:

. . .

> Because of the disagreement which has developed over the interpretation of the act, it seems proper, however, to comment on the wisdom of the Authority's decision.
>
> To house administrative offices and employees at Muscle Shoals would require construction at the Shoals of office space and employee housing costing over $4,500,000. Much of this space would not be required by the Authority after the construction period was over and the Authority becomes

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[51] Joint Committee Report, supra at 9 (Emphasis added) (footnote omitted).

> an operating organization. It now appears more economical to utilize rental and rent-free space in Knoxville and Chattanooga, pending completion of construction of the 10-dam system.
>
> In view of the approaching completion of the dams the committee recommends that Congress give immediate consideration to clarifying the question about which substantial difference of opinion has existed.[52]

No member of the six-man majority was on the original congressional committees which produced the TVA Act.

Three of the nine members of the Joint Committee filed a vigorous dissenting report in which they stated unequivocably that the location of TVA headquarters in Knoxville was a "palpable

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[52]The citations which the majority report relied upon for its statement that "principal office" was not synonymous with operating or administrative headquarters do not support that position.

violation of this mandatory provision of the TVA Act."[53] Significantly, one of the three dissenters was Representative Wolverton of New Jersey, the only member of the Joint Committee who had been on either the House or Senate Committee that produced the TVA Act of 1933.[54]

VII. The Attempts to Move

A. The Planned Move

The Congress to which the Joint Committee reported did not enact legislation to answer the section 8(a) issue and resolve what the majority report recognized as "the substantial

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[53] Joint Committee Report, supra at 330-331.

[54] Id. at p. III; Joint Committee Hearings, supra at 5225.

difference of opinion on the issue."[55] The reason is that immediately after the Joint Committee issued its report, it appeared that the entire issue would be mooted by TVA's announced plans to move much of its administrative operations to the Muscle Shoals area. As TVA's general counsel testifying before a House subcommittee told an inquiring Alabama congressman at a later date, "The point has become academic, I believe, Mr. Andrews, in view of the Board's decision to move to Muscle Shoals. . . ."[56]

TVA's Board of Directors decided in 1939, "that the administrative advantages of remaining in Knoxville had largely disappeared, and that the time had

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[55]Joint Committee Report, supra at 9.

[56]House Hearings on First 1954 Appropriation Bill, supra at 1276.

therefore come for the moye to Muscle Shoals."[57] The offices which TVA intended to move were the offices of its Board of Directors, and those other offices which included the work of TVA's "central administrative force".[58]

B. Frustration of the Planned Move During the Period From 1939 to 1952

In 1940, TVA requested from the Bureau of the Budget funds for the construction of office facilities at Muscle Shoals, but the request came after the fall of France and during the war

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[57] Id. at 1239-1240 (March of 1953) (testimony of TVA's General Manager).

[58] Id.; Hearings Before the Subcomm. of the Senate Comm. on Appropriations on H.R. 6777, 79th Cong., 2nd Sess. at 5 (1946).

materials shortage.[59] The Bureau of the Budget denied the requested funds, "because of the materials shortages, and a feeling that we were moving into an urgent situation with regard to building supplies required in the defense effort."[60] World War II itself further frustrated plans for the move.[61]

After the war, TVA requested, the Bureau of the Budget approved, and Congress appropriated funds for use in planning the construction of office

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[59] Senate Hearings on Second 1954 Appropriation Bill, supra at 90 (1953).

[60] House Hearings on First 1954 Appropriation Bill, supra at 1299-1300 (1953) (testimony of TVA's General Manager); Senate Hearings on Second 1954 Appropriation Bill, supra at 90. See also, Hearings Before the Subcomm. of the Senate Comm. on Appropriations on H.R. 2788, 77th Cong., 1st Sess. at 50-51 (1942).

[61] Senate Hearings on Second 1954 Appropriation Bill, supra at 90.

facilities at Muscle Shoals.[62] Subsequently, federal budgetary policy changed to restrict capital expenditures and favor instead of other means of financing.[63] Accordingly, in 1948 TVA began searching for office space to rent in the Muscle Shoals area. Several proposals for separate rental facilities were considered and rejected.[64] An acceptable proposal was finally obtained from a private builder, but before it could be finalized the Korean War broke out and created another building materials shortage.[65]

The frustration of TVA's plans to move its headquarters during the period

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[62] Id.

[63] Id. at 90, 109-110.

[64] House Hearings on First 1954 Appropriation Bill, supra at 1301-1303.

[65] Id. at 1305.

between 1939 and 1952 was not caused by interference from Congress or the administration. As TVA summarized the matter in a prepared statement submitted to a Senate subcommittee in June of 1953:

> . . .
>
> The TVA Board proposes to move to Muscle Shoals because it will save money and add to the efficiency of TVA's work.
>
> This transfer has a long history. At the time TVA was established, it was generally assumed that the permanent headquarters of the Board would be on the Government reservation at Muscle Shoals. But when the Board took up its duties, it found that its most pressing job was the construction of Norris Dam and the preparation of plans for structures on the upper tributaries of the Tennessee. This suggested that for the time being Knoxville was a better location for the Board than Muscle Shoals.
>
> Fourteen years ago, within three years after the completion of Norris Dam, the Board of Directors concluded that the administrative advantages of

remaining in Knoxville had largely disappeared, and that the time had therefore come for the move to Muscle Shoals. In 1940, funds were requested of the Bureau of the Budget for construction of office facilities at Muscle Shoals. The request came to the Bureau in the autumn of 1940, after the fall of France, when materials shortages were already developing as a result of the stepped-up production program. So the allowance was postponed. World War II, of course, further delayed the move, and during the war years, when there was a heavy concentration of work on the tributaries, Knoxville was a reasonable location.

In the spring of 1946, in connection with the TVA appropriation bill for 1947, the Congress approved an item for carrying out initial planning for office facilities at Muscle Shoals. The record of the hearings includes a copy of the justification presented to committees of the House and Senate and testimony by the Chairman of the Board, then Mr. Lilienthal, reaffirming the Board's decision to move.

Again, in January 1947, it was indicated to the Senate Committee on Public Works that the TVA Board and major staff could function most effectively from Muscle Shoals.

Subsequently, Federal budget policy restricted or prohibited capital requirement where other means of financing could be obtained. Therefore, TVA, though it had received money for planning the office facilities, did not request funds for construction. Consequently, in the spring of 1950, TVA's General Manager recommended to the TVA Board that proposals be solicited from private builders who might be interested in providing space and leasing it to TVA. An acceptable and advantageous proposal was obtained, but prior to its formal acceptance the outbreak of hostilities in Korea and the increased drain of military requirements on steel and other materials made it obvious that the project should not go forward for the time being. In order that the arrangement might be carried out with least delay, letters were exchanged with Mr. Wallace S. Pitts, who submitted the most favorable proposal, recording the understandings reached before the plan was deferred.

In the early spring of 1952, when it became apparent that the steel shortage was likely to be eased soon, negotiations were resumed, and resulted in an agreement signed on behalf of the TVA Board

March 10, 1953. Under this lease arrangement a heavy capital expenditure at this time is avoided.

Although employees in units scheduled to be transferred to Muscle Shoals have known for years that their location in Knoxville should be considered as temporary, and the Board's intention to move has been repeatedly expressed, announcement of the signing of the lease agreement brought an immediate reaction from the Knoxville Chamber of Commerce and other local groups.[66]

. . .

C. The Appropriation Act Provisos - 1953 to 1956

When it was announced in March of 1953 that the relocation of TVA's headquarters to Muscle Shoals would result in Knoxville losing 500 jobs and a multi-million dollar payroll, Knoxville commercial and community interests raised

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[66] Senate Hearings on Second 1954 Appropriation Bill, supra at 90. The entire statement is reprinted in full in 99 Cong. Rec. at 2603-2604.

a howl of protest.[67] Representative Baker of Tennessee likened the effect of the announcement to that of an atomic bomb dropped on the city.[68] The Tennessee congressional delegation launched a vigorous, clever, and ultimately successful effort to frustrate TVA's plans to move.

The success of their effort was due in no small part to the fact that some members of Tennessee's congressional delegation, including the Representative from Knoxville, were members of the party which controlled both houses of Congress and the White House during the crucial early years of the effort. In addition, relations between TVA and the administration ranged from bad to terrible.

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[67] House Hearings on First 1954 Appropriation Bill, supra at 1239.

[68] Id. at 1279.

President Eisenhower characterized TVA as "creeping socialism", and well-known bitter relations existed between the Bureau of the Budget and the TVA Board during this period. It was not a propitious time for the move.

Additionally, TVA made a serious blunder at a time when congressmen were hypersensitive about bureaucratic accountability. When TVA officials originally testified before the House Appropriations subcommittee on March 12, 1953, they did not mention that they had signed a multi-million dollar office building contract just two days earlier.[69] This arrogant omission outraged even moderate congressmen and

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[69] House Hearings on First 1954 Appropriation Bill, supra at 1238, 1309.

was used repeatedly by opponents of the move to rally opposition to it.[70]

House and Senate Appropriation subcommittee hearings were held on the subject. During these hearings, TVA officials repeatedly stressed that the intended move was in the best interest of economy and efficiency.[71] While TVA officials stated that §8(a) did not mandate the move, there is some indication that they tried to play both sides of the street on this issue. TVA's general counsel testified in reference to §8(a):

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[70] E.g., 99 Cong. Rec. 3611, 6659, 6660-6661, 6715 (Representative Baker of Tennessee: "In almost the words of the late Will Shakespeare: 'Upon what meat hath this little Caesar fed to grow up so fat?'")

[71] House Hearings on First 1954 Appropriation Bill, supra at 1239-1243; Senate Hearings on Second 1954 Appropriation Bill, supra at 91-92.

MR. SWIDLER. We have considered this as having been incorporated for purposes of jurisdiction, venue, and removal of litigation and not in order to fix the place at which the work of TVA is carried on. But the statute in other provisions indicates the contemplation by Congress that Muscle Shoals would become the domicile and actual residence of the Board ultimately. For example, there is a provision that, of the hundreds of houses which existed on the Muscle Shoals reservation when we came down there and which were built by the Corps of Engineers, three of the houses should be reserved for the use of the Board. That legal requirement prevented us from disposing of those three when we sold all of the other houses. They have to be available to the Board.

I should say our Board does not intend to use them. I mention that only as showing the contemplation of Congress that the Board would ultimately take up residence at the Shoals.[72]

Seeking to prevent the move, members of Tennessee's congregational delegation

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[72] House Hearings on First 1954 Appropriation Bill, supra at 1250 (1953).

introduced bills which would have had permanent effect. On March 23, 1953, Congressman Baker introduced H.R. 4146, which would have amended section 8(a). On April 1, 1953, Senator Kefauver introduced S. 1541, which would have permanently prohibited TVA from moving any office from Knoxville unless Congress consented.[73] Neither bill became law.

Instead, Congress enacted as part of TVA's appropriation bills for fiscal years 1954 through 1956 provisos which conditioned use of any of those appropriated funds to acquire an administrative office building on Bureau of the Budget approval following a feasibility study.[74] The Bureau of the Budget never acted to approved such a

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[73]H.R. 4146 and S. 1541 are discussed more fully at pp. 169a-172a, below.

[74]E.g., Second Independent Offices Appropriations Act of 1954, 67 Stat. 187, 190 (1953).

move because of the enmity between it and the TVA Board. The final fiscal year in which an appropriation act for TVA contained a proviso relating to the move was 1958, which involved a proviso that prohibited TVA from using any of that year's appropriated funds to acquire an administrative office building anywhere.[75] Thereafter, Congress took no action to hinder the move.[76]

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[75]Public Works Appropriation Act of 1957, 70 Stat. 474.

[76]It is questionable whether the General Government Matters Appropriation Act of 1958 would have prevented the move. It related solely to the purchase or construction of an office building, whereas TVA planned a lease-purchase arrangement. See, Senate Hearings on Second 1954 Appropriation Bill, supra at 90-92. In any event, that restriction like all of the others was in an appropriation bill and concerned only the funds appropriated for that fiscal year. Whatever the extent of the restriction contained in the General Government Matters Appropriation Act of 1958, it did not become part of the permanent law and is no longer in effect.

VIII. Attempts by Tennessee Congressmen to Amend Section 8(a)

A. S. 1207 and S. 1506 of the 79th Congress, 1st Session

Senator McKellar of Tennessee, like all Tennessee Congressmen, preferred that TVA headquarters remain in Knoxville. However, he realized that §8(a) required otherwise. During hearings held in 1944 on a TVA appropriations bill for the next fiscal year, Senator McKellar brought up the subject with Mr. Lilienthal of TVA.[77] After advising Mr. Lilienthal that "principal office" meant the chief office of the company, Senator McKellar said:

> And personally, I would like very much for you to be at Knoxville, but as I read the law, you began violating it when you moved it from Muscle

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[77] Hearings on H.R. 4070 (The Independent Offices Appropriation Bill for 1954) Before the Subcomm. of the Senate Comm. on Appropriations, 78th Cong., 2nd Sess., at 427-429.

Shoals, the vicinity of Muscle Shoals, to Knoxville.

> I think Knoxville is an ideal place for it, but the law says, it not only thinks it should be in the vicinity of Muscle Shoals, but it provides each member of the Board, in addition to his salary, shall be permitted to occupy as his residence, one of the dwelling houses owned by the Government in the vicinity of Muscle Shoals, the same to be designated by the President of the United States.[78]

. . . .

Later on, after reading aloud §8(a)

Senator McKellar said:

> I think Knoxville, of course, is the ideal place for it, but in examining this law, Mr. Lilienthal, it just seems to me that you have utterly disregarded its provisions in almost every respect, and that is just one of them that I recall.[79]

Mr. Lilienthal attempted to avoid Senator McKellar's wrath by suggesting that

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[78] Id. at 428.

[79] Id. at 429 (Emphasis added).

section 8(a) was only "a definition of legal domicile".[80] Senator McKellar replied to this suggestion as follows:

> May I suggest when you want to override the act of Congress you are violating it, it would be very much simpler and easier to have the Congress authorize it. We still have some interest in the Tennessee Valley Authority, notwithstanding the position you take about it, and it would be so much simpler, or so much easier, in the long run, either to follow the law or ask Congress for a change in the law, and after all, this Congress has not been abolished yet and is not likely to be for some little time, our Communistic friends to the contrary notwithstanding.[81]

Senator McKellar made several attempts to amend the principal office provision. In June of 1945, he introduced for himself and Senator Stewart of Tennessee, S. 1207:

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[80] Id.

[81] Id. (Emphasis added).

S. 1207

A B I L L

To repeal the requirement of existing law that the Tennessee Valley Authorit maintain its principal office in the vicinity of Muscle Shoals, Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subsection (a) of section 8 of the Tennessee Valley Authority Act of 1933, as amended, is hereby repealed.

It was not enacted. In October of that same year, Senator McKellar introduced S. 1506:

S. 1506

A B I L L

To provide for maintaining the principal office of the Tennessee Valley Authority at Knoxville, Tennessee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That subsection (a) of section 8 of the Tennessee Valley Authority Act of 1933, as amended, is hereby repealed.

SEC. 2. In view of the fact that the principal administrative office of the Tennessee VAlley Authority has been established and maintained at Knoxville, Tennessee, for many years, and in view of the fact that Knoxville, Tennessee, is centrally located in the area served by the Authority, Knoxville, Tennessee, is hereby designated as the place where the principal administrative office of the Tennessee VAlley Authority shall be maintained; and the Authority is hereby authorized and directed to prepare and submit to the Congress plans and specifications for such buildings and facilities at Knoxville, Tennessee, as may be necessary and appropriate for maintaining its principal administrative office at that place.

It was not enacted.

B. S. 1277 of the 80th Congress, 1st Session

In 1948, Senator McKellar tried again. He introduced S. 1277 which would

have amended numerous provisions of the TVA Act of 1933, including section 8(a). It would have changed that provision to read:

> "Sec. 8. (a) The Corporation shall maintain its principal office in the vicinity of the dams either in the State of Tennessee or the State of Alabama. The Corporation shall be held to be an inhabitant and resident of the state in which, on the date of enactment of the Tennessee Valley Act Amendments of 1947, it maintains its principal office within the meaning of the laws of the United States relating to the venue of civil suit."[82]

Extensive hearings were held on the bill, but it was not enacted.

As part of its consideration of S. 1277, the subcommittee of the Senate Public Works Committee requested the views of the Justice Department concerning

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[82] Hearings on S. 1277 Before a Subcomm. of the Senate Comm. on Public Works, 80th Cong., 2nd Sess. at 4 (1948).

the bill.[83] In response to the subcommittee's request, Douglas W. McGregor, Assistant to the United States Attorney General, wrote a lengthy letter of evaluation concerning the changes that the bill would make. The Justice Department's official evaluation of the principal office provision is as follows:

> Section 8(a) of the Tennessee Valley Authority Act now provides that "The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits." In fact, the Tennessee Valley Authority's principal office is in Knoxville, Tenn. Section 6 of the bill would amend section 8(a) of the act to read as follows: "The Corporation shall maintain its principal office in the vicinity of the dams either in the State of Tennessee

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[83] Id. at 85.

> of the State of Alabama. The Corporation shall be held to be an inhabitant and resident of the State in which, or the date of enactment of the Tennessee Valley Authority amendments of 1947, it maintains its principal office within the meaning of the laws of the United States relating to the venue of civil suits." This amendment would apparently have the effect of changing the venue for suits against Tennessee Valley Authority from the northern judicial district of Alabama to the eastern judicial district of Tennessee.[84]

C. H.R. 4146 of the 83rd Congress, 1st Session

In March of 1953, after TVA had announced that it would move its administrative headquarters from Knoxville, Congressman Howard Baker from Knoxville introduced H.R. 4146, which provided:

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[84] Id. at 87 (Emphasis added).

H.R. 4146

A B I L L

To amend section 8(a) of the Tennessee Valley Authority Act of 1933 so as to provide that the Tennessee Valley Authority shall continue to maintain its principal office at Knoxville, Tennessee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 8 (a) of the Tennessee Valley Authority Act of 1933 (16 U.S.C., sec. 831g (a)) is amended to read as follows:

"SEC. 8. (a) The Corporation shall maintain its principal office in the immediate vicinity of Knoxville, Tennessee. The Corporation shall be held to be an inhabitant and resident of the eastern judicial district of Tennessee within the meaning of the laws of the United States relating to the venue of civil suits."

In explaining the purpose of H.R. 4146 to his colleagues, Representative Baker admitted:

> The act provided that the corporation should be held to be an inhabitant and resident of the Northern Judicial District of Alabama. However, Tennessee Valley Authority has always maintained its principal offices at Knoxville, Tennessee.[85]

H.R. 4146 was not enacted.

D. S. 1541 of the 83rd Congress, 1st Session

In April of 1953, Senator Kefauver introduced S. 1541 which would have prevented TVA from moving any office or facility in Knoxville to any other place before June 30, 1958. It would also have prevented any such move after that date unless Congress consented.[86] Senator

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[85] 99 Cong. Rec. 2321 (March 25, 1953) (Emphasis added).

[86] A copy of S. 1541 was submitted as an appendix to Alabama's brief in the district court, and it was transmitted to the appellate court on March 13, 1979, with the record on appeal. See, R. 319.

Kefauver said on the floor of the Senate that he had been informed by legislative counsel that his bill would be considered in the nature of overriding legislation, insofar as fixing the legal residence of TVA was concerned.[87]

E. H.R. 1215 and S. 757 of the 96th Congress, 1st Session

After the district court rendered its opinion and order in this case, Senator Baker of Tennessee introduced S. 757, which provides:

> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 8 of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831g (a)) is amended-
>
> (1) by striking out the first sentence and inserting in

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[87] 99 Cong. Rec. 2603 (April 1, 1953).

lieu thereof the following: "The Corporation shall maintain an office in the immediate vicinity of Muscle Shoals, Alabama, which shall be considered for purposes of jurisdiction, venue, service of process, and other similar judicial purposes, as the principal office of the Corporation.", and

(2) by adding at the end of such subsection the following new sentence: "The Board of Directors may establish and maintain such administrative or other offices for the Corporation as they deem in the best interests of the efficient and effective operation of the Corporation."[88]

Neither S. 757 nor H.R. 1215, which was identical to it, was enacted.

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[88]125 Cong. Rec. S. 3347 (dailey ed. March 26, 1979).

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No. 80-2197

In the Supreme Court of the United States

OCTOBER TERM, 1980

STATE OF ALABAMA EX REL. CHARLES A. GRADDICK, ATTORNEY GENERAL OF THE STATE OF ALABAMA,
PETITIONER

v.

TENNESSEE VALLEY AUTHORITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE TENNESSEE VALLEY AUTHORITY IN OPPOSITION

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QUESTION PRESENTED

Whether Section 8(a) of the Tennessee Valley Authority Act of 1933, 16 U.S.C. 831g(a), requires the Tennessee Valley Authority to move its headquarters from Knoxville, Tennessee, to Muscle Shoals, Alabama.

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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-2197

STATE OF ALABAMA EX REL. CHARLES A. GRADDICK, ATTORNEY GENERAL OF THE STATE OF ALABAMA, PETITIONER

v.

TENNESSEE VALLEY AUTHORITY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE TENNESSEE VALLEY AUTHORITY IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 42a-74a) is reported at 636 F. 2d 1061. The opinion of the district court (Pet. App. 1a-38a) is reported at 467 F. Supp. 791.

JURISDICTION

The judgment of the court of appeals (Pet. App. 75a-76a) was entered on February 13, 1981. A timely petition for rehearing was denied on April 2, 1981 (Pet. App. 77a-78a). The petition for a writ of certiorari was filed on June 29, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTE INVOLVED

Section 8(a) of the Tennessee Valley Authority Act of 1933 (TVA Act), 16 U.S.C. 831g(a), provides:

> The Corporation shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama. The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits.

STATEMENT

1. In 1933, Congress created the Tennessee Valley Authority (TVA). From its inception, the TVA has maintained offices in several locations, including Knoxville, Tennessee; Chattanooga, Tennessee; Muscle Shoals, Alabama; and Washington, D.C. (Pet. App. 43a). Section 8(a) of the TVA Act, 16 U.S.C. 831g(a), provides that TVA "shall maintain its principal office in the immediate vicinity of Muscle Shoals, Alabama." The TVA has always understood the term "principal office" in the statute to refer to the fixed location where it can be found to be served with legal papers. Thus, from its earliest days the TVA's administrative headquarters has been located in Knoxville, Tennessee (Pet. App. 43a).

Shortly after the creation of TVA, the legality of locating its headquarters in Knoxville was questioned. In 1934, Senator Black of Alabama wrote to the TVA and to President Roosevelt contending that TVA's location of its headquarters in Knoxville violated Section 8(a). The President, utilizing a draft response prepared by TVA at his request, replied on September 6, 1934 (R. 20):[1]

> [I]t seems to me that the Authority has fully complied with the Act. * * * The Authority's area of operations

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[1] "R." references are to the record filed in the court of appeals.

covers parts of seven States, and its activities are designed to benefit the whole nation. It therefore seems to me to be clear that the Congress meant by the provision as to the location of the principal office of the Authority only to fix a legal domicile—not to restrict or localize its business operations in any way.

In 1938, a special Joint Congressional Committee was created by statute to investigate TVA's entire program and operations. 52 Stat. 154. On motion of Senator Bankhead of Alabama (83 Cong. Rec. 4021 (1938)), a provision was included in the legislation specifically directing the committee to investigate whether TVA "has complied with that part of subsection (a) of section 8 of [the TVA] Act * * * which requires that the principal office of the Authority be maintained in the immediate vicinity of Muscle Shoals, Alabama." 52 Stat. 155. The Joint Committee, after hearing testimony from Senators Bankhead and Hill and Representative Sparkman of Alabama, as well as TVA witnesses, concluded: "While fully appreciating the contentions advanced by the Alabama Senators, the committee believes that the Board acted legally and within the sphere of its discretion in locating the Authority's administrative offices chiefly in Knoxville and Chattanooga." S. Doc. No. 56, 76th Cong., 1st Sess. 22 (1939).[2]

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[2]The Committee explained (*id.* at 21; footnotes omitted):

> In accordance with the act, the Tennessee Valley Authority Board of Directors, on July 30, 1933, passed a resolution fixing the location of the Authority's principal office at Muscle Shoals. Since that time, an office has in fact been maintained at the Shoals; and copies of the Authority's minutes and a duplicate of its corporate seal have been kept there. The Authority's administrative headquarters, however, including the offices of the Directors and most of the department heads, have been located at Knoxville, Tenn. Another large administrative office has been maintained at Chattanooga.
>
> * * * * *
>
> The term "principal office" has a definite legal meaning, as a fixed location where the corporation may always be served with

Since the passage of the TVA Act, each annual appropriation made by Congress has included funds for the operation of TVA's administrative headquarters, which has continued to be located in Knoxville. In 1976, TVA moved into a new office building complex in Knoxville which houses the TVA Board and more than 3,000 employees. This complex was built to TVA's specifications; it was planned and developed to facilitate TVA management communications with and directions to the various parts of the TVA system; and it is being occupied by TVA under a 20-year lease from October 6, 1976, with an option to renew (R. 311-312, 313, 315).

2. In 1977, petitioner brought this action in the United States District Court for the Northern District of Alabama to compel TVA to relocate its central administration in Muscle Shoals. The district court granted petitioner's motion for summary judgment (Pet. App. 1a-38a) and entered an order (*id.* at 39a-41a) enjoining the TVA from maintaining its headquarters anywhere other than Muscle Shoals.[3]

The court of appeals reversed (Pet. App. 42a-74a). The court of appeals agreed with the district court that petitioner had standing and that its claim was not barred by

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legal papers. It is not synonymous with operating or administrative headquarters, which are often located in an entirely different jurisdiction.

Authority officials assumed from the beginning that the words "principal office" were used in the Tennessee Valley Authority Act in their ordinary legal sense.

Three members of the committee dissented from the committee report and recommended that most of the TVA's functions be transferred to other agencies. *Id.* at 263-350. The minority report expressed the view that the TVA had violated Section 8(a) in locating its headquarters in Knoxville. S. Doc. No. 56, supra, at 330-331.

[3]This order was stayed pending appeal.

Frahn v. *TVA*, 41 F. Supp. 83 (N.D. Ala. 1941), a decision dismissing a suit brought by a group of Alabama residents to compel TVA to move its headquarters (Pet. App. 46a-47a). The court, however, held that the TVA had correctly interpreted Section 8(a) as requiring it only to maintain an office in Muscle Shoals for receipt of service of process. The court concluded that "the ambiguous meaning of the statutory term, general principals [*sic*] of corporate practice, the broad and flexible powers and purposes conferred by the statute, and the echoing silence of Congress in the face of the controversy" required it to ratify the TVA's interpretation (Pet. App. 74a).

ARGUMENT

Petitioner contends (Pet. 27-43) that Section 8(a) of the TVA Act requires the TVA to locate its headquarters in Muscle Shoals, Alabama. The court of appeals correctly rejected this contention in a detailed opinion on which we rely. Moreover, this case presents no legal issue of general importance; indeed, the question presented here is unique to this lawsuit. Accordingly, it does not warrant review by this Court.

As the court of appeals explained (Pet. App. 48a-49a, 53a-57a), the term "principal office" in Section 8(a) is somewhat ambiguous. Sometimes, the term has been treated as referring to corporate headquarters. By the same token, the term has also commonly been used to refer to the place where a corporation may always be found and served with legal process. See, *e.g.*, *Galveston, H. & S.A. Ry.* v. *Gonzales*, 151 U.S. 496, 508 (1894); *Colorado Interstate Gas Co.* v. *FPC*, 142 F. 2d 943, 951 (10th Cir. 1944), aff'd, 324 U.S. 581 (1945); *Dryden* v. *Ranger Refining & Pipe Line Co.*, 280 F. 257, 258-259 (5th Cir.), cert. denied, 260 U.S. 726 (1922); *Watters* v. *Hamilton Gas Co.*, 10 F. Supp. 323, 326 (S.D. W. Va.), aff'd, 79 F. 2d 438 (4th Cir. 1935). See also 1 H. Oleck, *Modern Corporate Law* § 3, at 13

(1958).[4] There is every reason to believe that Congress intended to give the term in Section 8(a) this latter meaning. When the TVA Act was passed in 1933, at least 12 states had statutes that required corporations to maintain in the state a resident agent in charge of a "principal office" for service of process.[5] And the focus of Section 8(a) is on TVA's presence for purposes of suit; after specifying the location of the principal office, the section continues: "The Corporation shall be held to be an inhabitant and resident of the northern judicial district of Alabama within the meaning of the laws of the United States relating to the venue of civil suits."

With respect to an analogous statute, the Attorney General has expressed his view that the term "principal office" does not generally refer to administrative headquarters. The act creating the Federal Savings and Loan Insurance Corporation (FSLIC) provided that its "principal office * * * shall be in the District of Columbia." 48 Stat. 1256. In a formal opinion, the Attorney General approved a proposal to locate FSLIC's administrative headquarters in New York City. 40 Op. Att'y Gen. 115 (1941).

Moreover, consideration of the TVA Act as a whole and its background suggests that the most reasonable interpretation of "principal office" is the one adopted by TVA and approved by the court of appeals relating to presence for service of process. The TVA Act is analogous to the charter

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[4]It is undisputed that TVA has complied with this interpretation of Section 8(a). On July 30, 1933, the TVA Board passed a resolution fixing the location of the Authority's principal office at Muscle Shoals. See S. Doc. No. 56, *supra*, at 21.

[5]See Ala. Code tit. 10, § 70(7) (1941) (derived from 1923 Ala. Acts, at 726); Colo. Comp. Laws § 2243 (1922); Conn. Gen. Stat. § 5160 (rev. 1949) (derived from a 1930 law); 28 Del. Laws 287-288 (1915); Ind. Code Ann. § 4826 (Burns 1929 Supp.); Md. Pub. Gen. Laws Ann. art. 23, § 4 (1924); Nev. Comp. Laws § 1677 (1929); N.J. Rev. Stat. § 14:4-2 (1937); N.M. Stat. Ann. § 32-108 (Comp. 1929); Tenn. Code Ann. § 3761 (1934); Va. Code § 3854 (1930); Wyo. Rev. Stat. § 28-106 (1931).

of a private corporation, which ordinarily specifies a legal "home" for the corporation that need not be its headquarters. Moreover, as noted above, the remainder of Section 8(a) relates to the proper venue for suits against the TVA. It was logical for Congress to specify Muscle Shoals as TVA's statutory location for service of process because the only properties TVA owned at its inception were in the Muscle Shoals area. But requiring TVA to maintain its headquarters at a particular site, even if that site is inconvenient, seems incompatible with other sections of the TVA Act that give the Authority broad discretion to manage its affairs in an efficient manner. See 16 U.S.C. 831b, 831c, 831e and 831dd. See also H.R. Conf. Rep. No. 130, 73d Cong., 1st Sess. 19 (1933) ("We have sought to set up a legislative framework, but not to encase [TVA] in a legislative straightjacket. We intend that the corporation shall have much of the essential freedom and elasticity of a private business corporation.").[6]

The legislative history of the TVA Act does not specifically address Section 8(a) of the Act; however, subsequent events support the view that the Act does not require the TVA to locate its headquarters in Muscle Shoals. From the time of the enactment of the Act, TVA has placed its corporate headquarters elsewhere than in Muscle Shoals. This

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[6]Petitioner relies (Pet. 37-43) on Section 2(e) of the TVA Act, 16 U.S.C. 831a(e), which permits TVA Board members to live in government-owned housing in Muscle Shoals, to support its interpretation. As the court of appeals explained (Pet. App. 63a-66a), however, this language is permissive and does not purport to require the Board members to live in Muscle Shoals (as did the initial House version of the Act). Because a large portion of TVA's initial activity was going to be in the Muscle Shoals area, it made sense for Congress to make available to the Board the then-existing government housing. Thus, the Joint Congressional Committee specifically found that "Congress provided for the possibility that the Authority might locate its administrative headquarters at Muscle Shoals, but refrained from requiring that it do so." S. Doc. No. 56, *supra*, at 22.

contemporaneous construction by the agency of the statute creating it is evidence of the meaning intended by Congress. See, *e.g., Udall* v. *Tallman*, 380 U.S. 1, 16 (1965). And shortly after the enactment of the Act, President Roosevelt, who had signed it, informed Senator Black of his view that the TVA's interpretation was correct. See page 2, *supra*.

Most significantly, Congress has always been aware that the TVA was headquartered in Knoxville, yet it has steadfastly refused to take any action to alter the situation or even to express the view that TVA was violating the Act. In 1935, TVA's construction of Section 8(a) was set forth before the House Military Affairs Committee, including Representative Hill of Alabama, which was conducting hearings on proposed amendments to the TVA Act. *Hearings on Tennessee Valley Authority Before the House Comm. on Military Affairs*, 74th Cong., 1st Sess. 603 (1935). The amendments enacted, however, did not address TVA's interpretation. See 49 Stat. 1075. In 1939, the Joint Congressional Committee stated in its investigative report on the TVA that the Authority had legally exercised its discretion to locate its headquarters in Tennessee. S. Doc. No. 56, *supra*, at 22. In 1944, the Senate Appropriations Committee reported an appropriations bill for TVA that included 16 restrictive amendments offered by Senator McKellar, two of which would have prohibited the use of funds for maintaining TVA's headquarters anywhere other than Muscle Shoals. After these amendments were debated on the Senate floor, the Appropriations Committee ordered them withdrawn. See 90 Cong. Rec. 2671-2673, 2813-2827, 2879-2903, 3037-3057 (1944).

Several years later Congress made clear that it did not consider a move of TVA headquarters to Muscle Shoals to be required by statute. In the early 1950's, the TVA Board of

Directors independently proposed a move of the headquarters to Muscle Shoals.[7] However, objections to the move were raised, and, in response, Congress inserted provisos in TVA's appropriations for fiscal years 1954, 1955, 1956, and 1957 to prevent any such move from taking place. 67 Stat. 190; 68 Stat. 289; 69 Stat. 355; 70 Stat. 474.[8] In short, Congress's failure to disturb TVA's interpretation of Section 8(a) strongly evidences its correctness. See, *e.g.*, *United States* v. *Rutherford*, 442 U.S. 544, 554 n.10 (1979).

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[7]The Board specifically stated that it proposed the move for reasons of efficiency, not because it felt that the move was required by statute. *Hearings on Independent Offices Appropriations for 1954 Before the Subcomm. of the House Comm. on Appropriations*, 83d Cong., 1st Sess. (Pt. 3), 1249-1250, 1276 (1953).

[8]The provisos in the first three statutes prohibited any expenditure of funds by TVA for an administrative office building until such expenditure had been approved by the Director of the Bureau of the Budget. It was common knowledge that bitter relations then existed between TVA and the Bureau, primarily as a result of the so-called Dixon-Yates controversy (see *Mississippi Valley Generating Co.* v. *United States*, 175 F. Supp. 505 (Ct. Cl. 1959), rev'd, 364 U.S. 520 (1961)), and the Director never gave the necessary approval. In the 1957 fiscal year appropriation, a similar proviso was stricken on a point of order, and a proviso directly prohibiting TVA's expenditure of any of the funds appropriated for an administrative office building was substituted. 102 Cong. Rec. 8725 (1956). The provisos in the fiscal year 1954 and 1956 appropriations were included after debate on the House floor during which Alabama Representatives contended, and Representatives from Tennessee and some other states denied, that Section 8(a) of the TVA Act required that TVA's administrative headquarters be at Muscle Shoals. See 99 Cong. Rec. 6658-6660 (1953); 101 Cong. Rec. 8495-8496 (1955).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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